

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1912.

No. 225.

POINT RICHMOND AND BERGEN POINT FERRY COM-
PANY, PLAINTIFF IN ERROR.

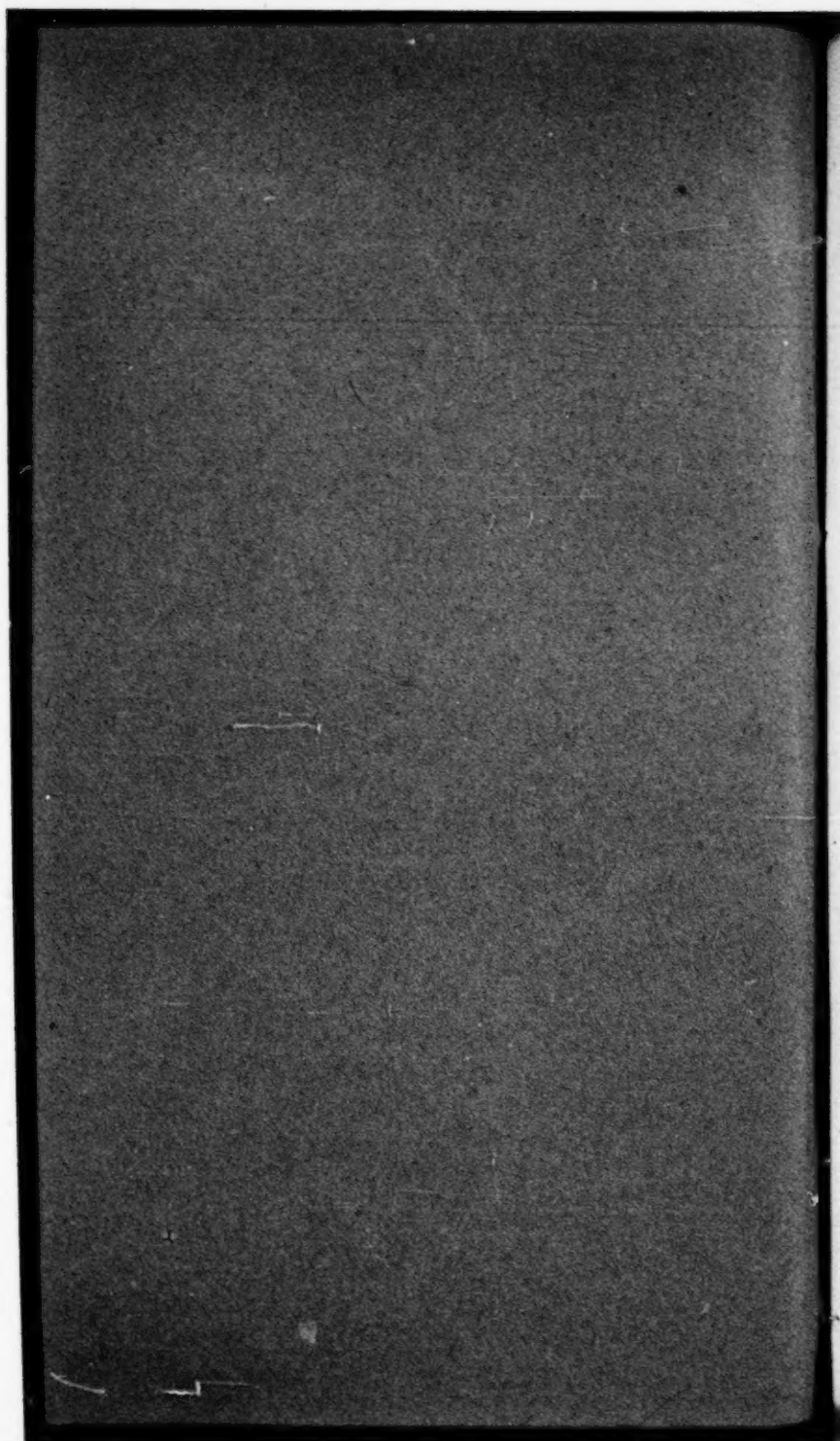
vs.

THE BOARD OF CHOSEN FREEHOLDERS OF THE
COUNTY OF HUDSON.

IN ERROR TO THE COURT OF ERRORS AND APPEALS OF THE STATE
OF NEW JERSEY.

FILED APRIL 6, 1913.

(23,146)



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a New Jersey Court of Errors and Appeals.

PORT RICHMOND AND BERGEN POINT FERRY COMPANY, Prosecutor-
Plaintiff in Error,

vs.

THE BOARD OF CHOSEN FREEHOLDERS OF THE COUNTY OF HUDSON,
Defendant-Defendant in Error.

On Certiorari. On Writ of Error to Supreme Court.

State of the Case.

Frank Bergen, Attorney of Plaintiff in Error.
John Griffin, Attorney of Defendant in Error.

1 *Writ of Error.*

Filed November 15, 1910.

NEW JERSEY, ss:

[SEAL.]

The State of New Jersey to Our Judges of Our Supreme Court,
Greeting:

Because in the record and proceedings, and also in the giving of judgment in a plaint, which was in our Supreme Court before you, between Port Richmond and Bergen Point Ferry Company, prosecutor, and the Board of Chosen Freeholders of the County of Hudson, defendant, on certiorari issued out of our Supreme Court to the said The Board of Chosen Freeholders of the County of Hudson directed, as is said, manifest error has intervened, to the great damage of the said prosecutor as aforesaid, as by its complaint we are informed; we being willing that the error, if any there be, should, in due manner, be corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, that if judgment be thereupon given, then you send distinctly and openly, under your seal, the record and proceedings and plaint aforesaid, with all things touching and concerning the same to our Court of Errors and Appeals in the last resort in all causes, before the judges thereof, on the twenty-sixth day of November, one thousand nine hundred and ten, and this writ, that the record and proceedings aforesaid being inspected we may further cause to be done thereupon what of right

and according to the constitution and laws ought to be done.
2 Witness, Mahlon Pitney, chancellor and president judge
of our said Court of Errors and Appeals, at Trenton aforesaid,
this tenth day of November, in the year one thousand nine hundred
and ten.

S. D. DICKINSON, Clerk.

FRANK BERGEN, Attorney.

Return.

The answer of the justices of the Supreme Court of the State of New Jersey within named.—The record and proceedings whereof mention is within made, with all things touching and concerning the same, we do certify to the Court of Errors and Appeals of said State, in a certain schedule to this writ annexed, as within we are commanded.

[SEAL.]

WM. S. GUMMERE, *C. J.*

3

Writ of Certiorari.

Filed June 28, 1909.

NEW JERSEY, ss:

[SEAL.]

The State of New Jersey to the Board of Chosen Freeholders of the County of Hudson, Greeting:

We are willing for certain reasons to be certified of certain resolutions passed by the Board of Chosen Freeholders of the County of Hudson, on or about the sixth day of July, nineteen hundred and five, fixing the rate of ferriage to be charged by Port Richmond and Bergen Point Ferry Company, in the possession of and operating a line of ferries between Bergen Point in the City of Bayonne, in the State of New Jersey, and Port Richmond in the city and State of New York.

We do command you that the said resolutions, together with all things touching and concerning the same in any way to our Supreme Court at Trenton on the Fifteenth day of July next, you certify and send, together with this writ, so that we may cause to be done thereupon what of right and according to the laws and constitution of this state ought to be done.

Witness William S. Gummere, Esq., Chief Justice of our Supreme Court at Trenton, New Jersey, the twenty-eighth day of June, 1909.

WILLIAM RIKER, JR., *Clerk.*FRANK BERGEN, *Attorney.*

4

Return.

I, Walter O'Mara, clerk of the Board of Chosen Freeholders of the County of Hudson, do hereby certify that the following are true copies of all resolutions and proceedings touching and concerning the fixing of the rates of ferriage to be charged by the Port Richmond and Bergen Point Ferry Company, in possession of and operating a line of ferries between Bergen Point in the City of Bayonne, in the State of New Jersey and Port Richmond in the city and State of New York, as mentioned in the writ of certiorari hereto annexed.

And I do herewith send to the Supreme Court of the State of New Jersey the within writ as therein commanded.

Witness my hand and seal this fourteenth day of July, nineteen hundred and nine.

[SEAL.]

WALTER O'MARA,
*Clerk of the Board of Chosen Freeholders
of the County of Hudson.*

Resolution Passed May 4, 1905.

By Freeholders DEMPSEY and MCCARTHY:

Whereas, under an act of the Legislature of the State of New Jersey entitled "An Act concerning ferries," passed February 6, 1799, the Boards of Chosen Freeholders are empowered and directed to fix the rates to be taken at the several ferries within their respective counties, and the same, from time to time, revise, alter, amend or make anew at their discretion; and

Whereas, by an act entitled "An act to regulate the rates of ferriage at the Hoboken and Jersey City ferries," approved March 10, 1853, the legislature did regulate the rates of ferriage on ferries at Hoboken and Jersey City; therefore, be it resolved,

(1) That this board inquire into the rates of ferriage charged at the several ferries within the County of Hudson outside of the cities of Jersey City and Hoboken.

(2) That this board hereby fixes Tuesday, May sixteenth, nineteen hundred and five, at three o'clock in the afternoon, at the Court House, in the City of Jersey City, as the time and place when and where it will give a hearing to the owners, proprietors, lessees, or persons, firms or corporations in the operation, management and control of such ferries operating within the County of Hudson outside the cities of Jersey City and Hoboken.

(3) That the deputy clerk of this board give notice of said hearing to the Weehawken Ferry Company, the Weehawken Transportation Company, the Hudson Connecting Railway Company, the Open Cut and General Warehouse Company, the Guttenberg Ferry Company, the West Shore and Ontario Terminal Company, the New York Central and Hudson River Railroad Company, the West Shore Railroad Company, and such other persons, firms or corporations as may be interested in the operation, management or control of ferries, and ferry boats operating between Weehawken and the City of New York; also the Port Richmond and Bergen Point Ferry Company, its lessees, successors or assigns, or other persons, firms or corporations, operating or in the management and control of ferries and ferry boats plying between Bayonne and Staten Island, New York, in the form hereto annexed; and with said notice said deputy clerk shall serve a copy of this resolution.

(4) That with said notice said deputy clerk serve the interrogatories also hereto annexed.

Dated May 4, 1905.

JERSEY CITY, N. J., May 4, 1905.

GENTLEMEN: Notice is hereby given to you that the Board of Chosen Freeholders of the County of Hudson will meet at the Court House, in the City of Jersey City, on Tuesday, May sixteenth, instant, at three o'clock in the afternoon for the purpose of investigating the rates of ferriage charged on ferries within the County of Hudson (excepting ferries in the cities of Hoboken and Jersey City), and, pursuant to law, to fix the rates to be taken at the several ferries within the County of Hudson (excepting ferries in the cities of Jersey City and Hoboken).

And notice is hereby given to you and each of you that at the time and place aforesaid you and each of you will be given a hearing, if you desire the same, touching said matter in so far as you or each of you may be concerned in any of the ferries within the County of Hudson (excepting the cities of Jersey City and Hoboken).

And you and each of you are requested at said meeting to furnish the data and information contained in the interrogatories hereto annexed.

This notice is given pursuant to a resolution of said Board of Chosen Freeholders, a copy whereof is hereto annexed.

Yours respectfully,

JOHN P. NOONAN,
Deputy Clerk.

To Weehawken Ferry Co., Weehawken Transportation Co., Hudson Connecting Railway Co., Open Cut and General Warehouse Co., Guttenberg Ferry Co., West Shore and Ontario Terminal Co., New York Central and Hudson River Railroad Co.,
7 West Shore Railroad Co., Richmond and Bergen Point Ferry Co., or whom it may concern:

Interrogatories.

(1) What ferry or ferries do you own, operate, lease, manage, or control plying between Hudson County (excluding Jersey City and Hoboken) and points outside of Hudson County?

(2) State the points between which each of such ferries ply?

(3) What number of ferry boats are used by you on each of said ferries?

(4) *Is* any such ferries used in connection with the railroad owned, controlled or operated by you; if so, state the name of the ferry or ferries and railroad or railroads?

(5) Any persons carried on such ferry or ferries who are not passengers on a rail or trolley road?

(6) State the value of the ferry boats, docks, terminal and other property used in connection with said ferries, and itemize the same.

(7) State the approximate number of foot passengers carried daily on each of said ferries.

(8) State approximately the number of persons who as passengers

on a railroad are carried daily upon either of said ferries as part of the journey.

(9) State approximately the number of persons who as passengers on a trolley or street railway are carried daily upon either of said ferries and who by the purchase of a trolley or street railway ticket become entitled to cross either of said ferries without paying further compensation.

8 (10) State approximately the number of foot passengers carried daily over each of said ferries on journeys from Hudson County to points outside of Hudson County who pay ferriage directly to the ferry company either in cash or in ferry tickets purchased from the ferry company and who are not transported across said ferry by virtue of their being passengers on a railroad, trolley or street railway.

(11) State the gross receipts derived from the transportation of passengers and vehicles on each of said ferries.

(12) State the gross receipts derived from the passengers mentioned in the tenth interrogatory.

(13) State the gross receipts derived from the transportation of passengers mentioned in the eighth interrogatory.

(14) State the gross receipts derived from the transportation of passengers mentioned in the ninth interrogatory.

(15) State the gross expenses incurred and paid by you in the maintenance and operation of such ferry or ferries, and furnish items of such expense.

(16) State the rates of ferriage charged on each ferry for the transportation of persons who are passengers on railroads or trolley cars and by virtue thereof have the right of passage across such ferry.

(17) State the rates of ferriage per capita charged by you to any railroad or trolley company for the transportation of passengers on such rail or trolley road.

(18) State the present schedule of rates of ferriage charged by you for the transportation of passengers and vehicles across such ferry.

Adopted.

9

Meeting of May 16, 1905.

NEWARK, N. J., May 16, 1905.

To the Honorable the Board of Chosen Freeholders of the County of Hudson.

GENTLEMEN: Your notice of May 4th addressed to Port Richmond and Bergen Point Ferry Company and other companies, relating to the matter of rates of ferriage, has been referred to me as counsel of the company mentioned above.

That company was incorporated by an act passed by the legislature of the State of New York, in the year 1848 (Chapter 306), supplements to the charter were passed in the following years:

Laws of 1857, Chapter 692.

Laws of 1860, Chapter 266.

Laws of 1864, Chapter 290.

Laws of 1868, Chapter 778.

Laws of 1873, Chapter 300.

Laws of 1881, Chapter 652.

In the charter of the company and in the supplements referred to above, rates of ferriage were fixed and no charges are made by the company in excess of the rates so fixed. I have advised the company that the act concerning ferries passed February 6th, 1799, and mentioned in your notice is not applicable to the Port Richmond and Bergen Point Ferry Company for the reason that the company was created by the act of the legislature of another state and is engaged in interstate commerce, and also for the reason that the authority to regulate the business of the company is vested by the Federal Constitution in Congress alone.

I have written to Mr. Griffin, your counsel, calling his attention to a few of the authorities sustaining this position,
10 which I have no doubt he will find satisfactory.

Very truly yours,

FRANK BERGEN,

General Counsel Public Service Corporation of New Jersey.

Mr. Albert C. Wall appeared for the New York Central and Hudson River Railroad Company, and denied the right of the board to fix the rates of ferriage on the West Shore ferries. He had the interrogatories and read answers to some of them, but did not file the interrogatories with answers in so far as the same were answered. He was requested to file the interrogatories with the answers he had, but it was suggested that he answer the other interrogatories in so far as he could and send the same to the board before its next meeting.

Received and referred to the Committee of the Whole.

Meeting of June 1, 1905.

NEW YORK, May 17, 1905.

To the Members of the Board of Chosen Freeholders of Hudson County, N. J.

GENTLEMEN: The fact of this communication being made to you is not to be deemed a recognition by the New York Central and Hudson River Railroad Company of any official right of your board to demand or have the information hereby communicated or to take any official action upon the subject matter of it.

This company distinctly denies the possession by your board of any such right, authority or power.

The company addresses this communication to you solely
11 as and by way of a courtesy extended by it to you, not officially, but as individual members of the general public of your county.

Its purpose is to afford to you, respectively, such information upon the subjects therein mentioned as in due course of courtesy to you this company deems it proper and reasonable to accord you, having

just regard to the interests of the general public and to the interests of the company in and in respect of the subjects to which the information has reference.

This company is the lessee of and as such possesses and operates the railroad property and appurtenances of the West Shore Railroad Company extending from Buffalo, N. Y., via Albany, N. Y., and Weehawken, N. J., to the City of New York, N. Y., with various connecting lines.

As constituting a part of that railroad system this company owns and operates lines of boats between its railroad terminal at Weehawken, N. J., and Franklin street, New York City, N. Y., three boats; between Weehawken, N. J., and Forty-second street, New York City, N. Y., two boats; and between West New York, N. J., and Forty-second street, New York City, N. Y., one boat.

West Shore R. R. ferries.

West Shore ferries.

Their primary service is the accommodation of the patrons of the railroad proper in its general passenger, mail, express, baggage and freight service. These boats are accessible to and their service available to and are availed of in and for the transportation of persons and property other than travelers upon and shipments upon the railroad proper as distinguished from this navigation service.

The aggregate number of passengers carried daily on these boats is approximately 17,000, of whom approximately 12,000 are not passengers on the West Shore Railroad otherwise than upon these boats.

The company has no means of knowing who or how many of the said 12,000 patrons are passengers who come via or from or
12 are destined to or via trolley lines, nor how many of them are on journeys to or from points within or how many to or from points without the County of Hudson, nor how many of said 17,000 or said 12,000 travel by either of its said boat lines.

The schedule of fares and tolls exacted is the same on all three lines, a copy of it was deposited with the clerk of your board on May 16th inst.

The boats above mentioned in and about the said service rendered by them sailed upon and over the public navigable waters of the United States and the service there rendered by them and in which they are engaged is solely that of commerce among the several states and between the United States and foreign countries.

The boats with their routes of navigation and the railroad of which they are a part, constitute as an entirety a post route of the United States. The boats carry the property of the Federal Government together with other property and person over the public navigable waters of the United States and their service does not pertain to the domestic affairs of either state or to the people of either state as such, but to the affairs and people of the United States.

The only power possessing authority to prescribe and enforce uniform rules in respect of such navigation and commerce, and to supervise and regulate the fares and tolls to be exacted for that service, is the United States Government. It is the superior and the only one

to whom the company operating these boats owes and must yield obedience in this behalf.

In so far as the right and power of the New York Central and Hudson River Railroad Company to provide and maintain this navigation service rests upon authority of the State of New Jersey, it was granted by the special charters of the constituent companies to which the West Shore Railroad Company succeeded, the charters of that company and its lessor companies and the railroad law of the State.

The charters and laws which confer the authority, rights
13 and powers above mentioned, prescribe in so far as it is within the power of the State to prescribe, the regulations of fares and charges for the authorized service and leave nothing in that regard subject unto the supervision or control of county or municipal authorities.

These are expressions of legislative will and intent of later date than the Act of 1798, and by them the Legislature has itself exercised the power of supervision and regulation concerning the subjects mentioned. Sections 19, 38 and 43 of the Railroad Law, Chapter 257 of the Laws of 1903, cover the entire subject, and thus supersede the provisions of the Act of 1799, if indeed, without these later enactments that Act could have been deemed applicable to this service.

Yours respectfully,

ALBERT H. HARRIS,

General Attorney.

Received and referred to Committee of the Whole and counsel of the board.

Resolutions Passed July 6, 1905.

By Freeholder DEMPSEY:

Whereas, this board at a meeting held on May fourth last, pursuant to an act of the Legislature of the State of New Jersey, entitled "An Act concerning ferries," passed February 6, 1799, passed a resolution to inquire into the rates of ferriage charged at the several ferries within the County of Hudson outside of the cities of Jersey City and Hoboken, and fixed Tuesday, May 16, 1905, at three o'clock in the afternoon, at the Court House in the City of Jersey City, as the time and place when and where it would give a hearing to the owners, proprietors, lessees, persons, firms or corporations in the operation, management and control of such ferries operating within the

County of Hudson, outside of the cities of Jersey City and
14 Hoboken, and directing upon whom notice should be served, and with which notice certain interrogatories were to be served, all of which appears by said resolution, notice and interrogatories heretofore passed and approved by this board, which said resolution, notice and interrogatories are made a part hereof; and it appearing that due notice of said hearing was given; and

Whereas, at the time and place so fixed this board met, and there appeared before it, in response to said notice, Albert C. Wall, Esq., of the law firm of Vredenburg, Wall & Van Winkle, representing the New York Central & Hudson River Railroad Company, the lessee

in possession of and operating lines of ferry between the railroad terminal of the West Shore Railroad Company at Weehawken, N. J., and Franklin street, in the City of New York, and between Weehawken, N. J., and Forty-second street, New York City, and between West New York and Forty-second street, New York City, all known as the West Shore ferries; and also received a communication from Frank Bergen, Esq., general counsel of the Port Richmond and Bergen Point Ferry Company, which company is engaged in the operation of a ferry from Bergen Point, in the County of Hudson, to Staten Island, New York; and after said meeting said New York Central & Hudson River Railroad Company communicated with this board, through Albert H. Harris, Esq., its general attorney, by letter dated May 17, 1905; and

Whereas, this board having taken time to consider what had been urged and presented to it on the subject of the rates of ferriage to be imposed and charged on the ferries, and duly considered the same, and it appearing to this board that the rates to be taken at the several ferries specifically above mentioned, within the County of Hudson, for the transportation and carriage of foot passengers from the

County of Hudson to the terminal of said ferries in the State
15 of New York and return, should be six cents for the round trip for each person; therefore, be it

Resolved, that in the exercise of its discretion, and pursuant to the direction of said last mentioned act, this board does hereby fix the rates of ferriage to be charged by the aforesaid companies for the transportation of foot passengers from the County of Hudson to the terminal of said ferries in the State of New York and from said terminal returning to the County of Hudson, at the rate of six cents for each adult person, for the round trip, and four cents for each person under ten years of age; and, be it further

Resolved, that true copies of this resolution, certified by the clerk of this board under the seal of the county, be forwarded to the New York Central & Hudson River Railroad Company and the Port Richmond & Bergen Point Ferry Company.

Dated July 6, 1905.

Adopted by the following vote:

Yeas—Freeholders Bernhardt, Crosby, Dempsey, Diehl, Dite, Doody, Ehrhart, Fallahee, Griffin, Henzi, Hogan, McCarty, McDonald, McManus, Nurge, O'Hare, Pairson, Roche, Schmidt, Smith, Schwartz and Director Clark—22.

Nays—None.

Absent—Freeholders Clements, Condon, Langan and Rath—4.

Freeholder McDonald moved that a committee of five be appointed to wait on the ferry companies in reference to the foregoing resolution and to take steps to enforce the same.

Adopted.

The director thereupon appointed as such committee Freeholders Dempsey, McCarty, Nurge, McDonald and O'Hare—5.

16 By Freeholder DEMPSEY:

Whereas, this board at a meeting held on May fourth, last, pursuant to an act of the Legislature of the State of New Jersey, entitled "An Act concerning ferries," passed February 6, 1799, passed a resolution to inquire into the rates of ferriage charged at the several ferries within the County of Hudson, outside of the cities of Jersey City and Hoboken, and fixed Tuesday, May 16, 1905, at three o'clock in the afternoon, at the Court House in the City of Jersey City, as the time and place when and where it would give a hearing to the owners, proprietors, lessees, persons, firms or corporations in the operation, management and control of such ferries operating within the County of Hudson, outside of the cities of Jersey City and Hoboken, and directing upon whom notice should be served, and with which notice certain interrogatories were to be served, all of which appears by said resolution, notice and interrogatories heretofore passed and approved by this board, which said resolution, notice and interrogatories are made a part hereof; and it appearing that due notice of said hearing was given; and

Whereas, at the time and place so fixed this board met, and there appeared before it, in response to said notice, Albert C. Wall, Esq., of the law firm of Vredenburg, Wall & Van Winkle representing the New York Central & Hudson River Railroad Company, the lessee in possession of and operating lines of ferry between the railroad terminal of the West Shore Railroad Company, at Weehawken, N. J., and Franklin street, in the City of New York, and between Weehawken, N. J., and Forty-second street, New York City, and between West New York and Forty-second street, New York City, all known as the West Shore Ferries; and also received a communication from Frank Bergen, Esq., general counsel of the Port Richmond &

17 Bergen Point Ferry Company, which company is engaged in the operation of a ferry from Bergen Point, in the County of Hudson, to Staten Island, New York; and after said meeting said New York Central & Hudson River Railroad Company communicated with this board, through Albert H. Harris, Esq., its general attorney, by letter dated May 17, 1905; and

Whereas, this board having taken time to consider what had been urged and presented to it on the subject of the rates of ferriage to be imposed and charged on the ferries aforesaid and duly considered the same, and it appearing to this board that the rates to be taken at the several ferries specifically above mentioned, within the County of Hudson, for the transportation and carriage of foot passengers from the County of Hudson to the terminal of said ferries in the State of New York, should be three cents for each person; therefore, be it

Resolved, that in the exercise of its discretion, and pursuant to the direction of said last mentioned act, this board does hereby fix the rates of ferriage to be charged by the aforesaid companies, for the transportation of foot passengers from the County of Hudson by said ferries to the terminal of said ferries in the State of New York, at the rate of three cents for each adult person, and two cents for each person under ten years of age; and, be it further

Resolved, that true copies of this resolution, certified by the clerk of this board under the seal of the county, be forwarded to the New York Central & Hudson River Railroad Company and the Port Richmond & Bergen Point Ferry Company.

Dated July 6, 1905.

Adopted by the following vote:

Yeas—Freeholders Bernhardt, Crosby, Dempsey, Diehl, Dite, Doody, Ehrhardt, Fallahee, Griffin, Henzi, Hogan, McCarty, McDonald, McManus, Nurge, O'Hare, Pairson, Roche, Schmidt, Smith, Schwartz, and Director Clark—22.

18 Nays—None.

Absent—Freeholders Clements, Condon, Langan and Rath—4.

Meeting of October 5th, 1905.

By Freeholder DEMPSEY:

Resolved, that the clerk of this board be and is hereby instructed to write the ferry companies operating ferries between Weehawken, Bayonne and New York City, asking them to fix a day on which to meet with the committee of this board appointed to confer with them on the question of reduced rates of ferriage as provided for in the resolutions adopted by this board.

Adopted.

[SEAL.]

19

Reasons.

Filed July 20, 1909.

New Jersey Supreme Court.

PORT RICHMOND AND BERGEN POINT FERRY COMPANY, Prosecutor,
vs.

THE BOARD OF CHOSEN FREEHOLDERS OF THE COUNTY OF HUDSON,
Defendant.

On Certiorari.

And the said prosecutor, by Frank Bergen, its attorney, comes and assigns the following reasons why the said resolutions and proceedings brought up by the writ of certiorari in this cause in so far as they relate to the prosecutor or to its rates or business should be set aside, annulled and for nothing holden:

First. Because the said resolutions were not adopted in the manner required by the statute.

Second. Because the said resolutions in their application to the prosecutor are unreasonable, unjust and illegal.

Third. Because the prosecutor is a corporation created by and organized under a statute passed by the Legislature of the State of New York in the year 1848 entitled "An Act to incorporate the Port

Richmond and Bergen Point Ferry Company," and still exists and is subject to the said act of incorporation and the amendments thereof or supplements thereto, and being chapters 692 of Laws of 1857, 266 of Laws of 1860, 290 of Laws of 1864, 778 of Laws of 1868, 300 of Laws of 1873 and 652 of Laws of 1881, which act and amendments or supplements have been accepted by the prosecutor.

Fourth. Because in said act of incorporation passed in the year 1848 the Legislature of the State of New York prescribed the rates the prosecutor might charge for ferry service, including the carrying of passengers, teams, cattle and other animals, vehicles and merchandise, and has twice since the original act was passed in amendments thereof passed in the years 1857 and 1868 changed the rates for such services that the prosecutor might charge, and the prosecutor is now charging for such services less in some instances, and no more in any instance, than that prescribed by the Legislature of the State of New York.

Fifth. Because the said resolutions of the defendant, in so far as they relate to the prosecutor, conflict with its charter or act of incorporation and the supplements thereto or amendments thereof and to that extent are illegal and void.

Sixth. Because the said resolutions and proceedings in so far as they purport to fix or change the rates for service that may be charged by the prosecutor violate the contract between the State of New York and the prosecutor created by and expressed in the said act of incorporation and its amendments and supplements and the acceptance thereof by the prosecutor.

Seventh. Because the defendant had, and has, no jurisdiction over the operation of the ferry of the prosecutor nor right to fix or prescribe the amount that the prosecutor may charge for ferry service for the reason that the prosecutor is engaged in interstate commerce, to wit; the business of carrying on a ferry to transport passengers, merchandise, etc., from Port Richmond in the State of New York to Bergen Point in the State of New Jersey, and that its business being interstate commerce is subject only to regulation by the government of the United States.

Eighth. Because the government of the United States by an act entitled "An Act to regulate Commerce," approved the fourth day of February, 1887, and the supplements thereto and amendments thereof, has undertaken to supervise and regulate and is now engaged in supervising and regulating commerce among the states, including the matter of fixing and changing rates for services rendered by the prosecutor and other parties engaged in interstate commerce.

Ninth. Because the resolutions in so far as they relate to the prosecutor conflict with said act of Congress and with its supplements and amendments and with the commerce clause of Section 8 of Article I of the Constitution of the United States.

Tenth. Because the government of the United States under the Constitution of the United States has the sole and exclusive right to

regulate the business of the prosecutor and to fix and change rates for its services.

Eleventh. Because for other reasons the said resolutions are unjust, oppressive and illegal.

FRANK BERGEN,
Attorney for Prosecutor.

22

New Jersey Supreme Court.

PORT RICHMOND AND BERGEN POINT FERRY COMPANY, Prosecutor,
vs.
THE BOARD OF CHOSEN FREEHOLDERS OF THE COUNTY OF HUDSON,
Defendant.

On Certiorari.

Testimony.

Transcript of shorthand notes taken in the above entitled cause at the office of Public Service Corporation of New Jersey, Prudential Building, Newark, New Jersey, on Friday morning, April 29, 1910.

Appearances:

Mr. Frank Bergen, for prosecutor;

Mr. John Griffin, for defendant.

It is agreed that the testimony shall be taken down stenographically, and afterwards transcribed, signature of witness being waived.

L. D. HOWARD GILMOUR, called on the part of the prosecutor, and duly sworn.

Direct examination by Mr. BERGEN:

Q. You reside in Newark, Mr. Gilmour?

A. Yes, sir.

Q. What is your profession?

A. Lawyer.

Q. Are you in the employ of the Public Service Corporation and the corporations controlled by it?

A. Yes.

23 Q. Are you familiar with the Port Richmond and Bergen Point Ferry Company?

A. Yes, sir.

Q. In what state was that company incorporated?

A. Incorporated under the laws of the State of New York.

Q. Was it incorporated under a general act or a special act?

A. My recollection is that it is a special act.

Q. I hand you a copy of the law, Chapter 306 of laws of New York of 1848.

A. Yes, "An Act to incorporate the Port Richmond and Bergen Point Ferry Company," passed April 12th, 1848.

Q. You understand that is the act under which it was incorporated?

A. I understand that is the act under which that company was incorporated, and is now operating.

Q. Do you know how long the company has been in operation?

A. Well, of my own knowledge, it has been in operation for twenty years.

Q. You don't know how much longer?

A. I don't know how much longer.

Q. Between what points does the company operate?

A. It operates between Port Richmond, Staten Island, and Bergen Point, Bayonne.

Q. Bayonne, now formerly called Bergen Point?

A. Yes, sir.

Q. Port Richmond is in New York State?

A. Yes, sir, Richmond County, New York State.

Q. And Bergen Point, or Bayonne as it is now called?

A. Is in Hudson County, New Jersey.

Mr. BERGEN: I offer in evidence Chapter 306, Laws of New York, passed in the year 1848; also Chapter 692, Laws of New York, passed in 1857; Chapter 266, Laws of New York, passed in the year 1860; Chapter 290, Laws of New York, passed in 1864; Chapter 24 778, Laws of New York, passed in 1868; Chapter 300, Laws of New York, passed in 1873; and Chapter 652, Laws of the State of New York, passed in 1881—being the charter of the Port Richmond and Bergen Point Ferry Company, and its amendments and supplements.

(Copy of said laws marked Prosecutor No. 1.)

Q. Do you know the rates of ferriage that the company is now charging? I will hand you a memorandum which I think you made yourself.

A. Yes, sir, I did make a memorandum.

Q. Annexed to that is a schedule.

What is the company now charging per passenger for ferriage across the Kill, from Port Richmond, on Staten Island, to Bergen Point or Bayonne in New Jersey?

A. Five cents for each passenger.

Q. What does the charter allow?

A. (Continuing previous answer:) A child's ticket is one-half; they are charging three cents. The charter allowed them to charge six and a quarter cents. The act of 1868 reduced it to six cents.

Q. So the legal rate now is six cents according to the laws of New York?

A. The legal rate now is six cents according to the laws of New York; and they are charging five.

(By Mr. GRIFFIN:)

Q. Have you an excursion ticket, that is, a round trip ticket?

A. No, sir.

(By Mr. BERGEN:)

Q. Just give us the rates charged for all service?

Mr. GRIFFIN: Why not put that list right in?

Mr. BERGEN: We offer in evidence the following schedule:

25	Acts	1848.	1857.	1868.	Present rate.
Each and every passenger.....		.06 1/4	.06 1/4	.06	.05
Every man and horse.....		.12 1/2	.12 1/2	.12	...
Every horse or mule, led or driven..		.12 1/2	.12 1/2	.12	.10
Every one-horse carriage, horse and driver .....	.25	.25	.24	.24	.20
Every two-horse carriage, horse and driver .....	.37 1/2	.37 1/2	.50	.35	.35
Cattle per head.....	.18 3/4	.18 3/4	.18	.10	.10
Sheep, calf or hog, &c.....	.03	.03	.05	...	...
Dead freight per bbl. bulk.....	...	.03	...	...	.03
One-half passenger ticket (child)...	...	...	...	...	.03
One-horse wagon or truck.....	...	...	...	...	.24
One-horse wagon or truck (100 tickets) .....	...	...	...	...	.20
Two-horse wagon or truck (100 tickets) .....	...	...	...	...	.35
Two-horse wagon or truck.....	...	...	...	...	.40

(Said schedule of rates marked Prosecutor No. 2.)

Cross-examination by Mr. GRIFFIN:

Q. Are there any other ferries operating from Bergen Point to Staten Island at the present time?

A. I think not; not that I know of.

Q. Do you think your company is the only company operating a ferry from Bergen Point to Staten Island?

A. Yes, sir, as far as I know.

Q. Do you know of the Bergen Point Ferry Company?

A. I know there is a company of that kind.

Q. Is it in existence?

A. I think it is; I think it is in existence.

Q. Does your company own it?

A. I can't tell you that without looking it up.

Q. You have no objection to looking it up and letting me know?

26 A. Not at all. We will put the fact in the testimony, and write to you.

Q. Then the Bergen Point and Staten Island Ferry Company; do you know of that company, whether it is in existence?

A. No; I don't know that one; I can look that up, too.

Q. Yes.

A. And put it in, if you like; I don't know in regard to that one. I know there is one New Jersey company there which is in existence, as I understand, but which one it is I am not sure.

Q. Well, then there is a Bergen Point and Staten Island and New York Ferry Company?

A. That was a New York corporation, I think—wasn't it?

Q. It was organized under our laws.

A. I am not familiar with that one.

Q. Then the Bergen Point and Staten Island, and Constable's Hook and New York Ferry companies?

A. I am not familiar with that one, either.

Q. Will you look up those companies, and see whether or not they are in existence?

A. Yes.

Q. And if they are, be prepared to state whether the Port Richmond and Bergen Point Ferry Company owns the capital stock of any of these companies, or if the Public Service company owns the capital stock, and if they are operating this ferry under the charters of any of these New Jersey companies as well as the New York companies.

It is admitted that the notice and interrogatories set out in the return to the writ were by the defendant sent to and received by the prosecutor; and that Mr. Bergen, as attorney for the prosecutor, sent to the defendant the letter set out in the return in response thereto, and the prosecutor did not answer the interrogatories further
27 than as contained in said letter.

That at the time and place appointed in said notice The Board of Chosen Freeholders of the County of Hudson met in open meeting and gave a hearing to all persons desiring to be heard vouching the fixing of the rates of ferriage, in accordance with said notice, and that the prosecutor did not appear at said meeting by any representative, but caused to be sent to the defendant the letter of May 16, 1905, signed by Mr. Bergen, set out in the return.

That the meetings of the defendant referred to in the return to the writ were regular meetings; and that the resolutions set out in the return are true copies of the resolutions passed by the defendant.

It is stated by the prosecutor and is admitted in evidence with the same force and effect as if testified to, that the title to the docks, wharves and terminus of the prosecutor at Bergen Point, in the County of Hudson, stands in the name of Public Service Corporation of New Jersey; that said property was purchased by the prosecutor with money advanced by North Jersey Street Railway Company, a constituent corporation of Public Service Railway Company, and that the prosecutor still owes said Public Service Railway Company the amount of such purchase price; that in the report made to the State of New York each year the said property is reported as being the property of the prosecutor in the State of New Jersey; that all of the capital stock of the prosecutor, except five shares owned by the directors, is owned by Consolidated Traction Company, which was leased to North Jersey Street Railway Company, one of the constituent companies of Public Service Railway Company.

Testimony Closed.

PROSECUTOR EXHIBIT No. 1.

Chapter 306—Laws of N. Y., 1848, P. 436.

An Act to Incorporate the Port Richmond and Bergen Point Ferry Company.

Passed April 12th, 1848.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

SECTION 1. George W. Sands, David Sands, Oliver R. Martin, Robert S. Lockwood and Andrew J. Roe, and their associates, are hereby constituted a body corporate by the name and description of the Port Richmond and Bergen Point Ferry Company, for the purpose of establishing and maintaining a ferry across the river Kill von Kull, from Port Richmond, Richmond County, and State of New York, to Bergen Point, Hudson County and State of New Jersey, on the opposite side of the river, to erect all necessary wharves, docks and bridges, for the accommodation of the ferry trade, and by that name shall have power to purchase, hold and convey real and personal estate, provided, such real estate shall not exceed in value the sum of five thousand dollars.

2. The capital stock of the said Company shall not exceed ten thousand dollars, to be divided into shares of fifty dollars each, which shall be deemed personal property and shall be transferable in such manner as the said Company shall by their by-laws direct.

3. The management of the affairs of the said Company, shall be intrusted to three directors, being stockholders of the said corporation, an election of directors shall be held, immediately after the passage of this act, at such particular time and place in the County of Richmond as the said Company shall appoint, which said directors

shall hold their offices until the first Monday of May, 1848, at and after which time an annual election of directors shall be held on the first Monday of May in each year, at such place in the County of Richmond, as the said directors may from time to time appoint, which directors so elected shall hold their offices for one year from the first Monday of May in each year, and until others are elected in their said stead. The election shall be by ballot and each stockholder shall at such election be entitled to one vote for each share of the capital stock held by him, and may vote either in person or by proxy.

4. The directors of the said Company shall have power to appoint all the officers and agents which may be necessary for conducting the business of the said Ferry and to remove the same at pleasure, to establish rules, regulations and by-laws, not inconsistent with the laws of this State, of the State of New Jersey, or of the United States, for the government of the stockholders, officers and agents of the said Company, and generally to control and superintend the business of the said Company.

5. To entitle the said Company to the benefits and privileges conferred by this Act, they shall at all reasonable times hereafter between sunrise in the morning and sun-down in the evening, or whenever the travel shall require between those hours, have a boat or scow of sufficient dimensions, to be propelled by horse or steam power, to contain and accommodate any reasonable number of persons, horses, carriages or cattle, and so many and such other boats as shall be necessary, safe and convenient for the transportation of passengers across the said river, with safe and skilful ferry-men to attend the same.

6. It shall be lawful for the said Company to charge and receive the following rates of ferriage, to wit: For each and every passenger 6¼ cents; every man and horse 12½ cents; for every horse or mule led or driven, 12½ cents; every one-horse carriage with horse and driver, 25 cents; every two-horse carriage with horses and driver, 37½ cents; every head of neat cattle, 18¾ cents; every sheep, calf or hog, 3 cents.

7. If the said Company or any person in their employ shall demand or receive any higher rates of ferriage than those established by this act, or if the said Company shall refuse or neglect to transport passengers or property in pursuance of the provisions of this act, the said Company shall forfeit to the party aggrieved the sum of Five Dollars, to be recovered in any Court of the State having cognizance thereof.

8. If any person or persons, after the passage of this act, shall transport across the said river Kill von Kull any person or persons, or property, for hire or pay between any point in the said County of Richmond within one mile of the dock or landing-place of said Company, the said person or persons first mentioned shall each forfeit and pay for every such offense the sum of Five Dollars to the said Company, who may sue for the same in any Court having cognizance thereof, but nothing herein contained shall be construed so as to exclude any person or persons from the right of making use of their own boat and transporting themselves and property across the same at their pleasure.

9. The Legislature may at any time alter or repeal this act.

31 Chapter 692, Laws of N. Y., 1857, P. 519.

An Act to Amend an Act Entitled "An Act to Incorporate the Port Richmond and Bergen Point Ferry Company," Passed April 12th, 1848.

Passed April 17th, 1857.

The People of the State of New York represented in Senate and Assembly, do enact as follows:

SECTION 1. Jacob Travis, James Wood and John Mercereau, who have become the assignees of all the grantees named in said act, with their associates and assigns, are hereby constituted and continued a body corporate by the name and description of the Port Richmond and Bergen Point Ferry Company for the purpose of

continuing and maintaining the ferry across the strait or river Kill von Kull from Port Richmond, Richmond County, and State of New York, to Bergen Point, Hudson County and State of New Jersey, on the opposite side of the river or strait, to erect all necessary wharves, docks and bridges for the accommodation of the ferry trade, and by that name shall have power to purchase, hold and convey real and personal estate, provided such real estate shall not exceed in value the sum of five thousand dollars.

2. The capital stock of the said Company shall not exceed thirty thousand dollars, to be divided into shares of fifty dollars each, which shall be deemed personal property and shall be transferable in such manner as the said Company shall by their by-laws direct; and the said Company may commence its business when the capital stock shall be subscribed and twenty per cent. shall be paid in.

3. The management of the affairs of the said Company shall be entrusted to three directors, being stockholders of the said corporation; an election of the directors shall be held immediately after the passage of this Act, at such particular time and place in the

32 County of Richmond as the said Company may direct, which said directors shall hold their offices until the first Monday of May, 1855 [sic] at and after which time an annual election of directors shall be held on the first Monday of May in each year at such place in the County of Richmond as the said directors may from time to time appoint; which directors so elected shall hold their offices for one year from the first Monday in May in each year and until others are elected in their stead; the election shall be by ballot and each stockholder shall at such election be entitled to one vote for each share of the capital stock held by him and may vote either in person or by proxy.

4. The directors of the said Company shall have power to appoint all the officers and agents which may be necessary for conducting the business of the said ferry, and to remove the same at pleasure; to establish rules, regulations and by-laws, not inconsistent with the laws of this State, of the State of New Jersey, or of the United States, for the government of the stockholders, officers and agents of the said Company, and generally to control and superintend the business of the said Company.

5. To entitle the said Company to the benefits and privileges conferred by this Act, they shall within one year from the passage of this Act, and at all reasonable times thereafter, and at all reasonable times after any period sooner than the said one year when they shall have complied with the provisions of this Section, between sunrise in the morning and sundown in the evening, or whenever the travel shall require between those hours, have a ferry boat of twenty-five horse power, to be propelled by steam, to contain and accommodate any reasonable number of persons, horses, carriages or cattle, and so many and such other boats as shall be necessary, safe and convenient for the transportation of passengers across the said strait, with a safe and skillful engineer and ferryman to attend the

same.

33 6. It shall be lawful for the said Company, but only after full compliance on their part with all the provisions of Section 5, of this Act, to receive the following rates of ferriage, to wit: For each and every passenger, $6\frac{1}{4}$ cents; every man and horse, $12\frac{1}{2}$ cents; for every horse or mule led or driven, $12\frac{1}{2}$ cents; every one-horse carriage with horse and driver, 25 cents; every two-horse carriage with horses and driver, $37\frac{1}{2}$ cents; every head of neat cattle, $18\frac{3}{4}$ cents; every sheep, calf or hog, 3 cents; and for every article of dead freight transported by them at and after the rate of 3 cents, for the bulk of a barrel of flour.

7. If the said Company or any person in their employ shall demand or receive any higher rates of ferriage or freight than those established by this Act, or if the said Company shall refuse or neglect to transport passengers or property under the provisions of this Act, the said Company shall forfeit to the party aggrieved the sum of five dollars, to be recovered in any Court of this State, having cognizance thereof.

8. So much and such parts of the Act entitled, "An Act to incorporate the Port Richmond and Bergen Point Ferry Company," passed April 12th, 1848, as are in any way repugnant to or inconsistent with the provisions of this Act are hereby expressly repealed.

9. The Legislature may at any time alter or repeal this Act.

10. All the stockholders shall be jointly and severally, individually liable to the creditors of the Company to an amount equal to the amount of stock held by them respectively for all debts and contracts made by said Company, while they shall respectively be stockholders; but no suit shall be brought against any stockholder until an execution against the said Company shall have been returned unsatisfied in whole or in part; but nothing in this act
34 contained shall be construed so as to allow said Company to contract debts or enter into contracts to an amount exceeding the amount of its capital stock.

11. This act shall take effect immediately.

Chapter 266, Laws of N. Y., 1860, P. 470.

An Act to Amend an Act Entitled "An Act to Amend an Act to Incorporate the Port Richmond and Bergen Point Ferry Company," Passed April 17th, 1857.

Passed April 11th, 1860.

The People of the State of New York represented in Senate and Assembly, do enact as follows:

SECTION 1. Jacob Travis, James Wood and John T. Mercereau, are hereby constituted and continued a body corporate, under the name and description of the "Port Richmond and Bergen Point Ferry Company," with all the powers, rights, franchises and privileges conferred upon them by the Act entitled, "An Act to incorporate the Port Richmond and Bergen Point Ferry Company," and the time within which said Company are, by the Fifth Section

of said Act, entitled to the benefits and privileges conferred thereby, is hereby extended for one year from the passage hereof.

2. This act shall take effect immediately.

35 Chapter 290, Laws of N. Y., 1864, P. 715.

An Act to Amend an Act Entitled, "An Act to Amend an Act Entitled, 'An Act to Amend an Act to Incorporate the Port Richmond and Bergen Point Ferry Company,'" Passed, April 11th, 1860.

Passed April 22nd, 1864.

The People of the State of New York represented in Senate and Assembly, do enact as follows:

SECTION 1. Henry M. Weed, James Wood and Abraham Ellis, are hereby constituted and continued a body corporate under the name and description of the "Port Richmond and Bergen Point Ferry Company," with all the powers, rights, franchises and privileges conferred by the Act entitled, "An Act to incorporate the Port Richmond and Bergen Point Ferry Company," passed April 12th, 1848, and the time within which said Company are, by the Fifth Section of said Act, entitled to the benefits and privileges given thereby, is hereby extended for two years from the passage of this Act.

Chapter 778, Laws of N. Y., 1868, P. 1746.

An Act to Authorize the Port Richmond and Bergen Point Ferry Company to Hold Real Estate, to Increase Its Capital Stock and to Fix Rates of Ferriage, and to Increase Its Number of Directors, and for Other Purposes.

Passed May 9th, 1868.

The People of the State of New York represented in Senate and Assembly, do enact as follows:

SECTION 1. The Port Richmond and Bergen Point Ferry Company, are hereby authorized to purchase, hold and convey
36 such real estate as may be necessary for the conduct and management of their business.

2. The capital stock of said Company may be increased to an amount not exceeding seventy-five thousand dollars.

3. The affairs and business of said Company shall be conducted by a board of directors, consisting of five persons, who shall be stockholders of said Company.

4. The said Company shall within ninety days after the passage of this Act, put on said route a steam ferry-boat suitable for carrying teams and passengers and shall maintain such steam ferry-boat, and in case of failure the said Company shall forfeit all its rights under this Act; and in case of such forfeiture, George W. Jewett, Washington Hawes, Anning Smith, John Decker, John H. Van

Clief, Edward McIntosh and John T. Johnston, and their successors, are hereby authorized and empowered to exercise all the powers and franchises of said Company, including those by this Act conferred, subject to the conditions and provisions of all existing laws applicable to said Company.

5. The Trustees of the Village of Port Richmond are hereby authorized and empowered to permit said Company, on such terms and conditions and for such time as they may deem proper, to use and employ as a ferry-landing, the public landing or dock in said village.

6. It shall be lawful for the said Company to charge and receive the following rates of ferriage, to wit: For each and every passenger, 6 cents; every man and horse, 12 cents; for every horse or mule led or driven, 12 cents; every one-horse carriage with horse and driver, 24 cents; every two-horse carriage with horses and driver, 50 cents;

every head of neat cattle, 18 cents; every sheep, calf, hog or goat, 5 cents. If the said Company or any person in their employ shall demand or receive any higher rates of ferriage than those established by this Act, the said Company shall forfeit to the party aggrieved the sum of five dollars, to be recovered in any Court of this State having cognizance thereof.

7. This act shall take effect immediately.

Chapter 300, Laws of N. Y., 1873, P. 432.

An Act in Relation to The Port Richmond and Bergen Point Ferry Company.

Passed April 25, 1873; three-fifths being present.

The People of the State of New York represented in Senate and Assembly, do enact as follows:

SECTION 1. George W. Jewett, Washington Hawes, Anning Smith, John Decker and John H. Van Clief, having duly met and organized as a board of directors of The Port Richmond and Bergen Point Ferry Company, the organization so formed and the officers elected by them is hereby declared to be The Port Richmond and Bergen Point Ferry Company, hereby continued in existence with all the rights, privileges, powers and duties in and by the several acts of the legislature of the State of New York, heretofore imposed upon, given and granted to said Company.

SEC. 2. The capital stock of said Company is hereby fixed at forty thousand dollars in shares of ten dollars each; but the stockholders may, by a majority vote at any meeting called, and of which due notice shall be given in the manner provided by law, increase their capital stock to an amount not exceeding seventy-five thousand dollars.

38 SEC. 3. The said above named persons shall manage and conduct the affairs of said corporation until such time as there shall be an election for directors as hereinafter provided.

SEC. 4. As soon as the whole capital stock of forty thousand dol-

lars aforesaid shall be actually subscribed for and twenty-five per cent. thereof actually paid in to the treasurer of said Company, said Company shall give notice in the manner prescribed by law for the giving of notices of meetings for the election of directors of corporations, and the stockholders shall at the time and place appointed meet and elect five directors of said Company, who shall hold office until the first Monday in May next succeeding their election, at which time and in each succeeding year an election shall be held, as is provided in said acts in relation to said Company. And it shall be obligatory upon said Company to organize and have the said ferry in operation for the accommodation of passengers, and teams on or before the expiration of two years from the passage of this act; and the said ferry shall thereafter be kept continuously in operation, and should said Company fail to commence running their boat or boats, as aforesaid, or shall fail thereafter to continue running, at least three hundred days in each year, then, in either case, the charter hereby granted to said Company shall be forfeited and remain null and void.

SEC. 5. This act shall take effect immediately.

39

Chapter 652, Laws of N. Y., 1881, P. 892.

An Act in Relation to the Port Richmond and Bergen Point Ferry Company.

Passed July 16th, 1881.

The People of the State of New York represented in Senate and Assembly, do enact as follows:

SECTION 1. Washington Hawes, John H. Van Clief, Alvah C. Nickerson, Charles Howdensmith and Sydney F. Rawson are hereby authorized to meet and organize as a board of directors of the Port Richmond and Bergen Point Ferry Company in place of the board of directors mentioned in Chapter 300 of the Laws of 1873, and when they shall so meet and organize, they shall have all the rights, privileges, powers and duties in and by the several acts of the Legislature heretofore passed, given or granted to or imposed upon said Company and its board of directors.

2. The limitations imposed by Section Four of said Chapter 300 of the Laws of 1873 is [sic] hereby imposed upon the directors and Company herein mentioned.

3. This act shall take effect immediately.

Filed November 5, 1910.

New Jersey Supreme Court, June Term, 1910.

No. 350.

PORT RICHMOND AND BERGEN POINT FERRY COMPANY, Prosecutor,
vs.
THE BOARD OF CHOSEN FREEHOLDERS OF THE COUNTY OF HUDSON,
Defendant.

Submitted July 7, 1910; Decided November 5, 1910.

The questions in this case held to be controlled by the decision of the Court of Errors and Appeals in *The State v. Freeholders*, 4 Zab., 722, and *New York Central & Hudson River Railroad Co. v. Freeholders of Hudson*, 74 Atl., 954.

On certiorari.

Before Justices Parker and Bergen.

For the prosecutor, Frank Bergen.

For the defendant, John Griffin.

The opinion of the court was delivered by PARKER, J.:

This writ of certiorari brings up the same two sets of resolutions that were passed upon by the Court of Errors and Appeals in the case of *New York Central & Hudson River Railroad Company v. Freeholders of Hudson*, 74 Atl., 954. The prosecutor owns and operates a ferry between Bergen Point, the southern extremity of Hudson County in this state, and Port Richmond on Staten Island, in the State of New York. The first resolution of the Board of Freeholders passed under and by virtue of the Act of 1799, referred to in the case just cited, after a somewhat lengthy preamble, resolves, "That in the exercise of its discretion and pursuant to the direction of said last mentioned act this board does hereby fix the rates of ferriage to be charged by the aforesaid companies (prosecutor being one of them) for the transportation of foot passengers from the County of Hudson to the terminal of said ferries in the State of New York, and from said terminal returning to the County of Hudson, at the rate of six cents for each adult person for the round trip, and four cents for each person under ten years of age," etc. The second resolution is similar in form except that the rate is fixed at three cents and two cents respectively for adults and children "for the transportation of foot passengers from the County of Hudson by said ferries to the terminal of said ferries in the State of New York."

The case is submitted on briefs; and counsel for prosecutor concedes in his brief that this case, excepting in one particular mentioned by him, is controlled by the decision just cited. This par-

ticular, which, as he claims, differentiates this case from the New York Central case, is that whereas in that case the prosecutor was operating in right of a New Jersey ferry company, incorporated in 1852, and, consequently, as he says, subject to all rights of the freeholders to fix ferry rates that were vested in them by the ferry act of 1799, in the present case the prosecutor is a corporation chartered in the State of New York, originally in 1857, and by that charter and by subsequent enactments in that state is authorized to charge ferry rates considerably in excess of those prescribed in the resolutions now attacked. His point, if we understand it correctly, is that the fact of incorporation in New York and the fact of rates having been fixed by the New York charter, gave rights to the prosecutor that are paramount to and unaffected by our legislation although one terminus of the ferry is within the jurisdiction of this state.

We deem this point to be fully covered by decisions in this state which are controlling on this court. The question elaborately discussed in both the prevailing and dissenting opinions in *New York Central R. R. v. Freeholders* was whether the court should be governed by the old case of *State v. Freeholders* in 4 Zabriskie, upholding the jurisdiction of the freeholders, or regard that case as overruled by later decisions of the United States Supreme Court and hold on their authority that the regulation of interstate ferries is a matter of interstate commerce to be regulated by Congress. The judgment of the court was that *State v. Freeholders* was still controlling; and in view of that judgment, we are pointed to the opinion in the former case for an exposition of the law on the subject. An examination of the opinion shows that the question of conflicting jurisdiction was fully recognized and discussed. On page 722 of 4 Zabriskie, Mr. Justice Elmer observes, with regard to the old ferries between Philadelphia and Camden:

"The ferries on each side were regulated and governed by the laws of the state in which such owner or keeper resided. Sail and row boats, and flats or scows, were the vessels in use, as is manifest from the act itself."

He continues:

"Applying the language of the act to the state of things then existing, and giving to that language its common and ordinary signification, as is the rule in the interpretation of statutes, where nothing indicates a different intention, I think it cannot be doubted, that in treating of ferries, the legislature had in view the ferry establishment, and not the way across the water. The act meant to authorize, and did authorize the boards of freeholders in the several counties, to regulate the fares to be taken at the ferry situate within that county; that is, at the ferry establishment of the owner or keeper. The rates, when established, apply to and are obligatory upon such owner or keeper, who is required by the second section to put up and maintain, where such ferry is kept, a post with a table of rates, fairly printed, written or painted. Even if it might happen, upon this construction, that one board might establish one set of rates at one side, and another board another set on

the other side, or that each state might have different regulations, where the ferry was over one of the rivers forming the boundary between this and another state, I do not see that there would be any important conflict of authority. Each power regulated what was done within its own jurisdiction, and left to others to regulate what was done in theirs. Existing ferries between this state and New York, and this state and Pennsylvania are now, in numerous instances, regulated by the laws of this state, without the occurrence of any difficulty."

He then cites several ferry enactments of the seventeenth century and proceeds as follows:

"Without deeming it necessary to go over and specially refer to the different acts noticed in the opinion of Judge Carpenter, delivered in this case, it is sufficient to say, that they show a course of legislation, commencing in 1714, and continued till near the passage of the act of 1799, by which the ferries over the waters dividing this state from the adjoining states, were regulated by the laws of New Jersey, in those cases *where ferry establishments were within this state.*

44 These laws operated upon the ferry owners and keepers, *when acting and receiving fares within this state*, and were superseded by the act now in question, which is general in its terms and applies to all ferries in the state, and repeals all prior acts within its purview." One of the objects of the act was to vest in the local boards, then newly organized and of a popular character, the power previously exercised by the legislature. To effect this object, the word ferries must be interpreted to mean, what in those laws it had obviously included, ferries, the owners or keepers of which resided in this state, *or which had one of their termini where fares were demanded*, in this state, and not merely ferries in the technical meaning, of an entire passage across a river or other water. * * * I am satisfied that the New Jersey statute applies, in like manner, to all ferries having one terminus in the state, and consequently that the board of freeholders of the County of Hudson has power to fix the rates of those between this state and the City of New York."

We have italicized certain parts of this quotation which particularly show that the court recognized no distinction between citizens of New Jersey and of other states as proprietor, and while not denying to other states full jurisdiction to fix ferry rates to be collected at the termini in those states, reserved to this state the right of control of rates to be collected at a terminus within this state. Such is the law as laid down by the Court of Errors and Appeals in 1853 and re-affirmed by the same court in 1909, and the extract quoted above seems to us fully to cover the point now made by the prosecutor. Whether the proprietor of the ferry, if a natural person, be a citizen of New Jersey or New York, or if a corporation, be chartered by our state or another state, is immaterial. The rates authorized by the New York charter to be collected by the corporation in question are no doubt controlling, as to its fares collected in that state. But when that New York corporation comes over to

45 New Jersey and sets up a ferry terminus here, it necessarily does so subject to our laws and cannot import a New York

statute to justify the collection here of charges that our laws forbid. It is the maintenance of a ferry terminus within this state, and not the place of birth or of residence of the proprietor of the ferry, that gives the jurisdiction to fix rates to be collected within this state. The same idea, will we think, be found in the case of Columbia Bridge Co. v. Geisse, 9 Vroom, at p. 43.

The further question is stirred but not discussed in prosecutor's brief, as to the right of this state to regulate round trip fares collected in this state as distinguished from fares for a single trip from New Jersey to New York. All that need be said on this point is that it is covered by the decision in the New York Central case, even if not fully discussed in the opinion; for one of the two sets of resolutions related to a single trip, and the other set to a round trip. Both were recited in the opinion of the Court of Errors in 74 Atl., at page 955; and both sets of resolutions were affirmed without discrimination.

These resolutions, therefore, as brought up by the prosecutor in the present case, on the authority of State v. Freeholders, and New York Central R. R. v. Freeholders, *supra*, should be affirmed.

46

Rule for Judgment.

Entered November 9, 1910.

New Jersey Supreme Court, November Term, 1910.

PORT RICHMOND AND BERGEN POINT FERRY COMPANY, Prosecutor,
vs.THE BOARD OF CHOSEN FREEHOLDERS OF THE COUNTY OF HUDSON,
Defendant.

On Certiorari.

The court having inspected the resolutions returned with the certiorari in this cause, and read the depositions taken and the reasons filed by the prosecutor, and heard the argument of counsel thereon and maturely considered the same do

Order that the writ of certiorari be dismissed and the resolutions brought up by the prosecutor under said writ, be affirmed with costs.

Entered November 9, 1910,

On motion of

JOHN GRIFFIN,
Attorney for Defendant.

Assignment of Errors.

Filed November 21, 1910.

New Jersey Court of Errors and Appeals.

PORT RICHMOND AND BERGEN POINT FERRY COMPANY, Prosecutor
and Plaintiff in Error, .

VS.

THE BOARD OF CHOSEN FREEHOLDERS OF THE COUNTY OF HUDSON,
Defendant and Defendant in Error.

On Error, etc.

Afterwards, to-wit, on the twenty-first day of November, in the year one thousand nine hundred and ten, in the Court of Errors and Appeals in the last resort in all causes, came the said Port Richmond and Bergen Point Ferry Company, by Frank Bergen, its attorney, and says: that in the record and proceedings aforesaid, and also in the judgment aforesaid, there is manifest error in this, to wit, that the supreme court adjudged that the resolutions passed by The Board of Chosen Freeholders of the County of Hudson, brought up by the writ of certiorari heretofore allowed in the above stated cause, should be affirmed, and that the said resolutions have been affirmed and said writ of certiorari dismissed; whereas said court should have adjudged that said resolutions, and each and all of them, were and are invalid, and that the same be set aside and for nothing

holden for the reasons, or some one of the reasons, filed by
48 and on behalf of the Port Richmond and Bergen Point Ferry Company in the Supreme Court on or about July twentieth, nineteen hundred and nine, said reasons being as follows:

First. Because the said resolutions were not adopted in the manner required by the statute.

Second. Because the said resolutions in their application to the prosecutor are unreasonable, unjust and illegal.

Third. Because the prosecutor is a corporation created by and organized under a statute passed by the legislature of the state of New York in the year 1848, entitled "An act to incorporate the Port Richmond and Bergen Point Ferry Company," and still exists and is subject to the said act of incorporation and the amendments thereof or supplements thereto, and being chapters 692 of Laws of 1857, 266 of Laws of 1860, 290 of Laws of 1864, 778 of Laws of 1868, 300 of Laws of 1873 and 652 of Laws of 1881, which act and amendments or supplements have been accepted by the prosecutor.

Fourth. Because in said act of incorporation passed in the year 1848 the legislature of the state of New York prescribed the rates the prosecutor might charge for ferry service, including the carrying of passengers, teams, cattle and other animals, vehicles and merchandise, and has twice since the original act was passed in amendments thereof passed in the years 1857 and 1868 changed the rates

for such services that the prosecutor might charge, and the prosecutor is now charging for such services less in some instances, and no more in any instance, than that prescribed by the legislature of the State of New York.

49 Fifth. Because the said resolutions of the defendant, in so far as they relate to the prosecutor, conflict with its charter or act of incorporation and the supplements thereto or amendments thereof, and to that extent are illegal and void.

Sixth. Because the said resolutions and proceedings, in so far as they purport to fix or change the rates for service that may be charged by the prosecutor, violate the contract between the State of New York and the prosecutor created by and expressed in the said act of incorporation and its amendments and supplements and the acceptance thereof by the prosecutor.

Seventh. Because the defendant had, and has, no jurisdiction over the operation of the ferry of the prosecutor, nor right to fix or prescribe the amount that the prosecutor may charge for ferry service, for the reason that the prosecutor is engaged in interstate commerce, to wit, the business of carrying on a ferry to transport passengers, merchandise, etc., from Port Richmond in the State of New York to Bergen Point in the State of New Jersey, and that its business being interstate commerce is subject only to regulation by the government of the United States.

Eighth. Because the government of the United States by an act entitled "An act to regulate Commerce," approved the fourth day of February, 1887, and the supplements thereto and amendments thereof, has undertaken to supervise and regulate, and is now engaged in supervising and regulating commerce among the states, including the matter of fixing and changing rates for services rendered by the prosecutor and other parties engaged in interstate commerce.

Ninth. Because the resolutions in so far as they relate to the prosecutor conflict with said act of Congress and with its supplements and amendments, and with the commerce clause of section 8 of article I of the Constitution of the United States.

50 Tenth. Because the government of the United States under the Constitution of the United States has the sole and exclusive right to regulate the business of the prosecutor, and to fix and change rates for its services.

Eleventh. Because for other reasons the said resolutions are unjust, oppressive and illegal.

And the said Port Richmond and Bergen Point Ferry Company prays that the judgment aforesaid may be reversed, annulled and altogether held for nothing, and that said company may be restored to all things which it has lost by occasion of said judgment, etc.

FRANK BERGEN,

Attorney for and of Counsel with Defendant in Error.

Joinder in Error.

Filed November 21, 1910.

New Jersey Court of Errors and Appeals.

PORT RICHMOND AND BERGEN POINT FERRY COMPANY, Prosecutor
and Plaintiff in Error,

VS.

THE BOARD OF CHOSEN FREEHOLDERS OF THE COUNTY OF HUDSON,
Defendant and Defendant in Error.

On Error, etc.

And hereupon, afterwards, to wit, on the twenty-first day of November, in the year one thousand nine hundred and ten, the said The Board of Chosen Freeholders of the County of Hudson, by John Griffin, its attorney, comes into court and says that there is no error either in the record and proceedings aforesaid, or in giving the judgment aforesaid, and prays here that the court may proceed to examine as well the record and proceedings aforesaid, as the matters aforesaid assigned for error, and that the judgment aforesaid, in manner aforesaid given, may in all things be affirmed, etc.

JOHN GRIFFIN,

Attorney for, and of Counsel with, Defendant in Error.

52 STATE OF NEW JERSEY:

Court of Errors and Appeals, Nov. Term, 1911.

In Error.

PORT RICHMOND & BERGEN POINT FERRY Co.
and

FREEHOLDERS OF HUDSON COUNTY.

No. 2nd (48) of Nov. Term, 1911.

Date M'ch 4, 1912.

Pitney, C., presiding.

Opinion by per Curiam:

	Check list.	Affirm.	Rever'l.
The Chancellor.....		1	..
" Chief Justice.....		1	..
Mr. Justice Garrison.....		1	..
" " Swayze		1	..
" " Trenchard		1	..
" " Voorhees		1	..
" " Kalisch		1	..
Judge Bogert		1	..
" Vrendenburgh		1	..
" Vroom		1	..
" Congdon		1	..
" White		1	..
Totals		12	0

Filed Mar. 4, 1912. S. D. Dickinson, Clerk.

53 New Jersey Court of Errors and Appeals, November Term, 1911.

No. 2d (148).

PORT RICHMOND AND BERGEN POINT FERRY COMPANY, Plaintiff in Error,

vs.

FREEHOLDERS OF HUDSON COUNTY, Defendants in Error.

Submitted December 11, 1911; Decided March 4, 1912.

On Error to Supreme Court, Whose Opinion is Reported in 80 N. J. Law (51 Vr.), 614.

For the Plaintiff in Error, Frank Bergen.

For the Defendant in Error, John Griffin.

Per Curiam:

The judgment under review herein should be affirmed for the reasons expressed in the opinion delivered by Mr. Justice Parker in the Supreme Court.

The doubt that was suggested whether the Act of Congress approved June 29, 1906, known as the Hepburn Act, interferes with the power of this state to adopt such regulations as are embodied in the resolution of the Board of Freeholders (this being one of the questions respecting which a reargument was had by order of this court), is disposed of by the concession made by the learned counsel for the plaintiff in error upon the reargument, to the effect that the Hepburn Act, so far as relative, simply extends the Interstate Commerce Act and the jurisdiction of the Interstate Commerce Commission over ferries operated in connection with railroads, and that the ferry of the present plaintiff in error never has been so operated, and that consequently the Hepburn Act has no bearing upon the present case.

The other questions upon which a reargument was ordered need not be considered, because even were it assumed that they should be answered in a manner favorable to the plaintiff in error, the result would not be changed.

Endorsed: "Filed Mar. 4, 1912. S. D. Dickinson, Clerk."

55 STATE OF NEW JERSEY:

Department of State.

I, S. D. Dickinson, Secretary of State of the State of New Jersey and ex-officio Clerk of the Court of Errors and Appeals in the last resort in all causes, do hereby certify that the foregoing is a true copy of an opinion read by said Court in the above stated cause,

March Term, 1912, as the same is taken from and compared with the original now remaining on file in my office.

In testimony whereof, I have hereunto set my hand and affixed my Official Seal at Trenton, this ninth day of March, A. D. 1912.

[SEAL.]

S. D. DICKINSON,
Secretary of State.

56 [Endorsed:] 1392. New Jersey Court of Errors and Appeals, November Term, 1911. Between Port Richmond and Bergen Point Ferry Company, Plaintiff in Error, vs. Freeholders of Hudson County, Defendants in Error. Opinion.

57 New Jersey Court of Errors and Appeals, June Term, 1911.

PORT RICHMOND & BERGEN POINT FERRY COMPANY, Plaintiff in Error,

v.

THE BOARD OF CHOSEN FREEHOLDERS OF THE COUNTY OF HUDSON,
Defendant in Error.

In Error to Supreme Court.

Order on Affirmance of Judgment.

This cause having been duly argued at the June Term, nineteen hundred and eleven, of this court by Frank Bergen, of counsel for the plaintiff in error, and John Griffin, of counsel for the defendant in error, and re-argued at the November term, nineteen hundred and eleven, by the same counsel, and the court having considered the same, and finding no error in the record or proceedings in the Supreme Court:

It is thereupon, on this fourth day of March, nineteen hundred and twelve, ordered and adjudged that the judgment of the Supreme Court, removed by the writ of error in this cause, be affirmed with costs; and that the record be remitted to the Supreme Court to be proceeded with in accordance with this judgment and the practice of said court.

On motion of John Griffin, Attorney of Def't in Error.

Endorsed: "Filed Mar. 11, 1912. S. D. Dickinson, Clerk."

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New Jersey Court of Errors and Appeals.

PORT RICHMOND AND BERGEN POINT FERRY COMPANY, Plaintiff in
Error,

vs.

THE BOARD OF CHOSEN FREEHOLDERS OF THE COUNTY OF HUDSON,
Defendant in Error.

Petition.

To the Honorable Mahlon Pitney, chancellor and presiding judge
of the Court of Errors and Appeals of the State of New Jersey:

The petition of Port Richmond and Bergen Point Ferry Company, plaintiff in error in the above entitled cause, respectfully represents that it is a citizen of the United States and of the state of New York, and is engaged in operating a ferry between Port Richmond, in the state of New York, and Bergen Point, in the county of Hudson and state of New Jersey; that at the present March term of this court judgment final was rendered in the above stated cause in the New Jersey court of errors and appeals, which is the court of last resort in all cases and the highest court of law and equity in the state of New Jersey in which a decision could be had.

That said action was upon a writ of certiorari issued by the supreme court to the board of chosen freeholders of the county of Hudson to review the legality of certain resolutions passed by the said board on or about the sixth day of July, nineteen hundred and five, fixing the rate of ferriage to be charged by your petitioner for tolls upon its ferry between Bergen Point, in the city of Bayonne, in the state of New Jersey, and Port Richmond, in the city and state of New York. And that upon a hearing in

59 due course of said suit the supreme court of the state of New Jersey affirmed the said resolutions, whereupon your petitioner sued out a writ of error from the New Jersey court of errors and appeals, and the matter coming on to be heard before that court the judgment of the supreme court was in all things affirmed.

And your petitioner further shows that the said action by the board of chosen freeholders of the county of Hudson was taken under and by virtue of an act of the legislature of the state of New Jersey, entitled "An Act concerning ferries" (see comp. stat. 2308), which purports to authorize said board to fix the rates of ferriage for all ferries landing in said county, and by the interpretation thereof by the supreme court, which was in all things sustained by the court of errors and appeals, enables said board to fix the rates to be charged by your petitioner on its said ferry, a matter that is exclusively within the jurisdiction of the congress of the United States and affecting interstate commerce and so interfere and impair rights possessed by your petitioner under and by virtue of the constitution of the United States and the laws enacted pursuant thereto.

And your petitioner assigned and urged in the said supreme court

and the court of errors and appeals that the said act of the legislature and the said resolutions were and are illegal and void because your petitioner was engaged in interstate commerce and subject only to regulation by the government of the United States and because congress, by an act entitled "An Act to regulate commerce" and approved the fourth day of February, eighteen hundred and eighty-seven, and the act supplemental thereto and amendatory thereof, has undertaken to supervise and regulate and is now supervising and regulating commerce among the states, and because the said act of the legislature and the said resolutions conflict with section 60 VIII, article I of the constitution of the United States; and that the judgment of the supreme court, affirmed by the court of errors and appeals, was and is contrary to the constitution of the United States of America and the laws thereof.

The said New Jersey court of errors and appeals being the highest court in which such judgment could be rendered in the state of New Jersey, and having decided that the orders against your petitioner were valid and effectual in law, and having decided that your petitioner was not entitled to the privilege and immunity claimed in and by virtue of the provision of the constitution of the United States hereinbefore set out and the laws enacted by virtue thereof, your petitioner alleges that it is aggrieved in that in the proceedings aforesaid said courts have denied to it the privileges and immunities to which it is entitled as a citizen of the United States, all of which will more fully and particularly appear in detail in the record to be presented herein.

Your petitioner therefore prays that a writ of error may issue from the supreme court of the United States, directed to the New Jersey court of errors and appeals, removing the judgments and proceedings aforesaid that there may be done thereof what according to the constitution of the United States and the laws of the land ought to be done and that your petitioner may have such other relief as may be proper.

And your petitioner will ever pray &c.

PORT RICHMOND AND BERGEN POINT
FERRY COMPANY,
By FRANK BERGEN, *Attorney*.

61 [Endorsed:] New Jersey Court of Errors and Appeals.
Port Richmond and Bergen Point Ferry Company, Plaintiff
in Error, vs. The Board of Chosen Freeholders of the County of
Hudson, Defendant in Error. Petition. Frank Bergen, Attorney
for Plaintiff in Error, 759 Broad Street, Newark, New Jersey. Filed
Mar. 14, 1912. S. D. Dickinson, Clerk.

New Jersey Court of Errors and Appeals.

PORT RICHMOND AND BERGEN POINT FERRY COMPANY, Prosecutor,
Plaintiff in Error,

vs.

THE BOARD OF CHOSEN FREEHOLDERS OF THE COUNTY OF HUDSON,
Defendant in Error.

Assignments of Error.

Now comes the said Port Richmond and Bergen Point Ferry Company, prosecutor plaintiff in error herein and respectively submits and shows to the Court that in the record, proceedings, decision and final judgment of the Court of Errors and Appeals of the State of New Jersey in the above stated cause manifest error hath intervened, to the great hurt and damage of the prosecutor, the plaintiff in error, hereafter as follows, to wit:

First. The Court erred in affirming the judgment of the Supreme Court of the State of New Jersey, which affirmed the resolution of the Board of Chosen Freeholders of the County of Hudson, brought up by the writ of certiorari in that cause.

Second. The Court erred in not reversing the judgment of the Supreme Court of the State of New Jersey of the several causes and reasons filed in said cause and in not sustaining such allegations of error in each of them.

Third. The Supreme Court of the State of New Jersey erred in not vacating the said resolutions for the reasons assigned upon the return of the writ of certiorari in said Court and in affirming said resolutions, and the Court of Errors and Appeals of the State of New Jersey erred in not reversing said judgment.

63 Fourth. The Court erred in not reversing the judgment of the Supreme Court for the reasons and causes of error assigned in said Court, or some of them.

Fifth. The Court erred in holding that the act of the legislature of the State of New Jersey entitled: "An Act Concerning Ferries" was not in conflict with the constitution of the United States of America.

Sixth. The Court erred in not holding that the action taken by the Board of Chosen Freeholders of the County of Hudson in passing the resolutions brought up for review were not contrary to the constitution of the United States of America and the laws enacted pursuant thereto.

Seventh. The Court erred in holding that the said act of the legislature of the State of New Jersey and the resolutions brought up for review were not in conflict with the act of congress approved the fourth day of February, one thousand eight hundred and eighty-seven, and the act supplemental thereto and amendatory thereof, which act is entitled: "An Act to Regulate Commerce."

Eighth. Because the said resolutions effect, concern and regulate interstate commerce, and are in violation of the constitution of the

United States of America, and particularly of paragraph 8, article I, of the constitution of the United States.

Ninth. Because the said judgment deprived the plaintiff in error of rights, immunities and privileges possessed and enjoyed under and by virtue of the constitution of the United States and the laws enacted pursuant thereto.

Tenth. Because the Court erred in not holding the said act of the legislature and the resolutions of the Board of Chosen Freeholders of the County of Hudson were not for divers other reasons and causes contrary to the constitution of the United States of America and the laws of the land.

Eleventh. The Court erred in divers other ways and manner, to the great injury, damage and detriment of the plaintiff in error and with the effect of deriving it of its property contrary to law.

And the said plaintiff in error prays that the judgment aforesaid may be reversed, annulled and altogether for nothing holden and it may be restored to all things which it has lost by occasion of said judgment.

FRANK BERGEN,
Of Counsel with Plaintiff in Error.

65 [Endorsed:] 1392. New Jersey Court of Errors and Appeals. Writ of Error. Port Richmond and Bergen Point Ferry Company, Prosecutor, Plaintiff in Error, vs. The Board of Chosen Freeholders of the County of Hudson, Defendant in Error. Assignments of Error. Frank Bergen, Attorney, Plaintiff in Error, 759 Broad Street, Newark, N. J. Filed Mar. 14, 1912. S. D. Dickinson, Clerk.

66 UNITED STATES OF AMERICA, ss:

The President of the United States of America to the Honorable the Judges of the Court of Errors and Appeals of the State of New Jersey, Greeting:

Because in the record and proceedings, and also in the rendition of the judgment of a plea which is in the said Court of Errors and Appeals of the State of New Jersey before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Port Richmond and Bergen Point Ferry Company, prosecutor, and The Board of Chosen Freeholders of the County of Hudson, defendant, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption especially set up or claimed under such clause

of the said Constitution, treaty, statute, or commission; a manifest error hath happened to the great damage of the said Port Richmond and Bergen Point Ferry Company as by its complaint appears: We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, 67. to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within thirty days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness the Honorable Edward D. White, Chief Justice of the United States, the fourteenth day of March, in the year of our Lord one thousand nine hundred and twelve.

[Seal District Court of the United States, District of New Jersey.]

GEORGE T. CRANMER,

Clerk of the District Court of the United States, for the District of New Jersey.

By C. S. CHEVRIER, *Deputy.*

Allowed by

MAHLON PITNEY,

Chancellor, Presiding Judge of the Court of Errors and Appeals of New Jersey.

68 [Endorsed:] 1392. Supreme Court of the United States. Port Richmond and Bergen Point Ferry Company, Plaintiff in Error, vs. The Board of Chosen Freeholders of the County of Hudson, Defendant in Error. Writ of Error to the New Jersey Court of Errors and Appeals. Frank Bergen, Attorney, Plaintiff in Error, 759 Broad Street, Newark, N. J. Filed Mar. 14, 1912. S. D. Dickinson, Clerk.

69 UNITED STATES OF AMERICA, ~~vs.~~:

To the Board of Chosen Freeholders of the County of Hudson, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a writ of error filed in the Clerk's Office of the Court of Errors and Appeals of the State of New Jersey, wherein Port Richmond and Bergen Point Ferry Company, prosecutor, is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned,

should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Mahlon Pitney, our Chancellor and President Judge of the Court of Errors and Appeals of the State of New Jersey, this fourteenth day of March, in the year of our Lord one thousand nine hundred and twelve.

MAHLON PITNEY,
*Chancellor, Presiding Judge of the Court of
Errors and Appeals of the State of New Jersey.*

[Endorsed:] 1392. Supreme Court of the United States. Port Richmond and Bergen Point Ferry Company, Plaintiff in Error, vs. The Board of Chosen Freeholders of the County of Hudson, Defendant in Error. Citation. Frank Bergen, Attorney, Plaintiff in Error, 759 Broad Street, Newark, N. J.

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Supreme Court of the United States.

PORT RICHMOND AND BERGEN POINT FERRY COMPANY, Plaintiff in Error,

vs.

THE BOARD OF CHOSEN FREEHOLDERS OF THE COUNTY OF HUDSON,
Defendant in Error.

Service is hereby acknowledged this 22nd day of March, A. D. 1912, of a copy of this citation, writ of error and assignments of error in the above stated cause.

JOHN GRIFFIN,
Attorney for Defendant in Error.

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[Endorsed:] 1392. Supreme Court of the United States. Port Richmond and Bergen Point Ferry Company, Plaintiff in Error, vs. The Board of Chosen Freeholders of the County of Hudson, Defendant in Error. Acknowledgment of Service. John Griffin, Attorney for Defendant in Error.

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STATE OF NEW JERSEY:

Department of State.

PORT RICHMOND AND BERGEN POINT FERRY COMPANY, Prosecutor-Plaintiff in Error,

vs.

THE BOARD OF CHOSEN FREEHOLDERS OF THE COUNTY OF HUDSON,
Defendant-Defendant in Error.

I, David S. Crater, Secretary of State of the State of New Jersey, and ex-officio Clerk of the Court of Errors and Appeals in the last resort in all causes, do hereby certify that the foregoing is a full, true and correct transcript of the record in the above entitled cause.

And I further certify that in pursuance of the Writ of Error heretofore filed in this cause, I now herewith transmit the said transcript, together with the original Writ of Error and original Citation, to the Supreme Court of the United States.

In testimony whereof, I have hereunto set my hand and affixed the Official Seal of said Court at Trenton, this Third day of April, A. D. 1912.

[Seal of the Secretary of the State of New Jersey.]

DAVID S. CRATER,
Secretary of State.

[Endorsed on cover:] File No. 23,146. New Jersey Court of Errors and Appeals. Term No. 225. Port Richmond and Bergen Point Ferry Company, plaintiff in error, vs. The Board of Chosen Freeholders of the County of Hudson. Filed April 6th, 1912. File No. 23,146.



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Supreme Court of the United States

OCTOBER TERM, 1913.
No. 225.

Office Supreme Court, U. S.

FILED

FEB 5 1914

JAMES D. MAHER

CLERK

PORT RICHMOND AND BERGEN POINT
FERRY COMPANY,

Plaintiff in Error,

vs.

THE BOARD OF CHOSEN FREEHOLDERS OF
THE COUNTY OF HUDSON,

Defendant in Error.

ON ERROR TO THE COURT OF ERRORS AND APPEALS OF
THE STATE OF NEW JERSEY.

Brief of Frank Bergen,

Counsel for Plaintiff in Error.

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Supreme Court of the United States

OCTOBER TERM, 1913. No. 225.

PORT RICHMOND AND BERGEN POINT

FERRY COMPANY,

Plaintiff in Error,

vs.

THE BOARD OF CHOSEN FREEHOLD-

ERS OF THE COUNTY OF HUDSON,

Defendant in Error.

*In Error to
the Court of
Errors and
Appeals of
the State of
New
Jersey.*

Brief for Plaintiff in Error.

Statement of Facts.

A judgment of the supreme court of New Jersey, affirmed by the court of errors and appeals of that state, is brought here by writ of error for review. The judgment affirmed two resolutions adopted by the board of chosen freeholders of Hudson County, New Jersey, on the sixth day of July, nineteen hundred and five, prescribing rates to be charged by the plaintiff in error for transporting passengers by a ferry across the Kill von Kull from Bergen Point, in Hudson County, New Jersey, to Port Richmond, on Staten Island, New York. One resolution prescribes the rate for single trips, the other for return trips across the Kill. The Kill von Kull is one of the streams by which the Hudson river empties into Newark and New York bays.

The ferry company was created by a special act of the legislature of New York originally passed April

Hudson River Railroad Company, and were the subject of litigation in this court in the case of *New York Central & Hudson River Railroad Co. v. Board of Chosen Freeholders of the County of Hudson*, 227 U. S., 248. It was held in that case that the resolutions so far as they related to ferries operated by the New York Central & Hudson River Railroad Company were invalid for the reason that they were an attempt by authority of an act of the legislature of New Jersey to directly regulate interstate commerce on ferries operated in connection with a railroad, and therefore subject to direct regulation by the interstate commerce commission. The present case differs from the New York Central case in these particulars: (1) The ferry of the present plaintiff in error is not operated in connection with a railroad; and (2) the ferries operated by the New York Central and Hudson River Railroad Company were owned by a corporation organized under the laws of the state of New Jersey, and the present plaintiff was created by a special act of the legislature of the state of New York.

The decisions of the courts of New Jersey in which the matter of prescribing rates to be charged by the owners of interstate ferries was considered are as follows: *State v. Freeholders of Hudson*, 23 N. J. Law, 206, affirmed 24 N. J. Law, 718; *New York Central case*, 74 N. J. Law, p. 367, 76 N. J. Law, p. 664, 80 N. J. Law, p. 305; and are examined briefly at pp. 24 and 25, *post*.

Points.

1. One of the questions involved in this case is whether an interstate ferry, not operating in connection with a railroad, is subject to regulation as to its rates by either of the states in which its termini are located.

2. Whether a ferry company created by a special act of the legislature of a state,—in this case the state of New York,—to operate an interstate ferry from a point in one state to a point in another, under rates prescribed in its charter, is subject to regulation as to its rates by the state other than that by which it was created.

3. Can a state in which one of the termini of an interstate ferry is located lawfully prescribe rates for a round or return trip, so that by purchasing a return ticket a passenger may cross the ferry in both directions at less cost than if single fares were paid at each terminus?

Questions Involved were Raised by Certiorari.

The questions involved in this case were raised in the New Jersey supreme court by a writ of *certiorari* issued out of that court to the defendant in error. The resolutions in question were sustained by that court, and its judgment was subsequently affirmed by the court of errors and appeals, the question being considered *res adjudicata* in that state because of the decision in *State v. Frecholders of Hudson*, *supra*.

Specification of Errors Relied On.

1. The resolutions adopted by the board of chosen freeholders of the county of Hudson on the sixth day of July, nineteen hundred and five, to reduce the rates of ferriage that the plaintiff in error might charge on its ferry are and each of said resolutions is unauthorized and unlawful because prohibited by the commerce clause of the constitution of the United States.

2. The judgment of the court of errors and appeals of New Jersey that the defendant in error had authority under an act of the legislature of that state to prescribe rates to be charged by the plaintiff in error on its interstate ferry operating across the Kill von Kull from Port Richmond on Staten Island, New York, to Bergen Point, now in the city of Bayonne, in Hudson county, New Jersey, is unlawful and prohibited by the commerce clause of the constitution of the United States.

3. The judgment of the court of errors and appeals of New Jersey that the defendant in error had authority under an act of the legislature of that state to prescribe rates for round trip tickets to be charged by the plaintiff in error on its interstate ferry is unlawful and prohibited by the commerce clause of the constitution of the United States.

4. The judgment of the court of errors and appeals of that state that the defendant in error had authority under an act of the legislature of that state to prescribe rates to be charged by the plaintiff in error on its said ferry which were lower than the rates prescribed in the charter of the plaintiff in error; being a special act of the legislature of New York, is unlawful and prohibited by the commerce clause of the constitution of the United States.

THE LEGAL QUESTION.

The question whether a state can prescribe rates to be charged by a person or corporation operating an interstate ferry not in connection with a railroad, is now presented directly to this court for the first time.

The answer would seem to be obvious, because (1) a ferry across an interstate stream is an instrument of interstate commerce; (2) the transportation of passengers, vehicles, horses and cattle from one state to another, is interstate commerce; (3) prescribing rates for such transportation is a direct regulation of interstate commerce; and (4) the power to regulate directly commerce among the states can be exercised only by authority of congress.

The doubts which lingered about this matter for many years, and which will be discussed hereafter, were substantially removed by the decision in the case of *Covington & Cincinnati Bridge Co. v. Kentucky*, 154 U. S., 204. The company in that case was incorporated in 1846 by the legislature of Kentucky to construct a toll bridge across the Ohio river from Covington to Cincinnati. By an act of the legislature of Ohio passed in 1849 the company was made a corporation of that state in the terms prescribed by the act of the legislature of Kentucky. The bridge was completed in 1867. In 1890 the legislature of Kentucky enacted that it should be unlawful to charge for passage over the bridge in excess of certain rates mentioned in the act, which were less than the directors of the company had previously fixed. The company refused to comply with the act. Its validity was sustained by the court of appeals of Kentucky, and upon error to this court the judgment of the Kentucky

court was reversed. The majority of the members of this court held: "(1) That the traffic across the river was interstate commerce; (2) that the bridge was an instrument of such commerce; (3) that the statute was an attempted regulation of such commerce, which the state had no constitutional power to make; and (4) that congress alone possesses the requisite power to enact a uniform scale of charges in such a case, the authority of the state being limited to fixing tolls on such channels of commerce as are exclusively within its territory." (p. 205.) The minority entertained the opinion that—"The several states have the power to establish and regulate ferries and bridges, and the rates of toll thereon, whether within one state, or between two adjoining states, subject to the paramount authority of congress over interstate commerce." (p. 205.)

On the same day when the *Covington and Cincinnati Bridge Company* case was decided, the case of *Covington & Cincinnati Elevated Railroad and Transfer & Bridge Co. v. Kentucky*, was decided in the same way. (154 U. S., 224.) The latter case evidently grew out of legislation of Kentucky similar to the act found to be invalid in the former case. It was held to be "in conflict with the interstate commerce clause of the constitution." No disposition can be found in subsequent cases to overrule or modify those judgments. Their effect was to render more uniform the law relating to interstate commerce, and much interstate commerce is now carried on by means of ferries.

In the *New York Central* case, *supra*, it was held that a ferry operated in connection with a railroad and carrying passengers who arrive at the ferry by rail, and also passengers who arrive at the ferry other-

wise, is not subject to regulation as to its rates by authority of a state. It was not necessary in that case to decide the question presented in the present case.

The case of *International Transit Co. v. City of Sault Ste. Marie*, decided March 14, 1912, 194 Fed. Rep., 522, is almost directly in point. It contains a lucid discussion of the authority of the state of Michigan to directly regulate a ferry operating between Sault Ste. Marie, Michigan, and Sault Ste. Marie, Ontario, by the International Transit Company, a corporation organized under the laws of the province of Ontario and licensed by the Dominion government to operate the ferry. The city of Sault Ste. Marie in Michigan had abundant authority under its charter, so far as authority could be given by the legislature of that state, to license and regulate ferries and to prescribe rates to be charged thereon, and by virtue of that authority the city attempted to prescribe rates to be charged by the company, and otherwise to regulate its business. The questions presented in the case are thus stated in the opinion of Judge Sessions (p. 526) :

"First. Has a state municipality the right and power to license a ferry operated by a foreign corporation upon and across navigable international boundary waters?"

"Second. As a municipal regulation, can a state municipality prescribe and fix the rates of fare to be charged by the owner for the transportation of persons and property upon such ferry?"

After carefully reviewing the authorities, the court answered both questions in the negative. In that case, however, the company invoked the protection of a treaty between the United States and Great Britain

dated January 11, 1909, relating to the boundary waters between the United States and Canada, and providing that the navigable boundary waters should be free and open for the purpose of commerce to the inhabitants and to the ships of both countries.

By the light of the *Covington cases* it is clear that the only question open for discussion in this case is: Whether there is a substantial distinction between an interstate bridge and an interstate ferry as instruments of commerce, which can sustain an effort of a state to prescribe rates for commerce on interstate ferries although the states have not the power to prescribe rates or tolls on interstate bridges, both being instruments of commerce carrying substantially the same objects of commerce. I do not think it is possible to perceive such a distinction. Speaking of a franchise to operate a ferry, Justice Story, in his opinion in the case of *Charles River Bridge v. Warren Bridge*, 11 Pet., 420, said:

"It is a franchise which approaches so near to that of a bridge that human ingenuity has not yet been able to state any assignable difference between them; except that one includes the right of pontage, and the other of passage or ferriage." (p. 620.)

In the *Covington Bridge Company case* counsel for the state of Kentucky felt constrained to take the position that although an interstate ferry boat is an instrument of commerce an interstate bridge is not. Referring to that argument the court said (154 U. S., 218):

"An attempt is made to distinguish a bridge from a ferry boat, and to argue that while the latter is an instrument of interstate commerce, the former is not. Both are, however, vehicles of

such commerce, and the fact that one is movable and the other is a fixture makes no difference in the application of the rule. Commerce was defined in *Gibbons v. Ogden*, 9 Wheat., 1, 189, to be 'intercourse,' and the thousands of people who daily pass and repass over this bridge may be as truly said to be engaged in commerce as if they were shipping cargoes of merchandise from New York to Liverpool. While the bridge company is not itself a common carrier, it affords a highway for such carriage, and a toll upon such bridge is as much a tax upon commerce as a toll upon a turnpike is a tax upon the traffic of such turnpike, or the charges upon a ferry a tax upon the commerce across a river. A tax laid upon those who do the business of common carriers upon a certain bridge is as much a tax upon the commerce of that bridge as if the owner of the bridge were himself a common carrier."

And in the *Gloucester Ferry case*, 114 U. S., 196, it was said:

"It matters not that the transportation is made in ferry-boats, which pass between the states every hour of the day. The means of transportation of persons and freight between the states does not change the character of the business as one of commerce, nor does the time within which the distance between the states may be traversed. Commerce among the states consists of intercourse and traffic between their citizens, and includes the transportation of persons and property, and the navigation of public waters for that purpose, as well as the purchase, sale and exchange of commodities."

It is no doubt true that states have exercised control in some instances over commerce by means of interstate ferries and bridges since the federal constitution was adopted, and there are expressions in a few opinions of this court that have been supposed to recognize the authority of the states to do so, notably in the cases of *Fanning v. Gregoire* (1853), 16 How., 524; *Conway v. Taylor's ex'r.* (1861), 1 Black, 603, and *Wiggins Ferry Co. v. East St. Louis* (1882), 107 U. S., 365. *But there is no decision of this court to that effect.* The expressions in those cases, and perhaps similar observations in a few other cases, appear to rest on a statement of Chief Justice Marshall in *Gibbons v. Ogden*, 9 Wheat., 1, at p. 203, as follows:

"That inspection laws may have a remote and considerable influence on commerce will not be denied; but that a power to regulate commerce is the source from which the right to pass them is derived, cannot be admitted. The object of inspection laws is to improve the quality of articles produced by the labor of a country; to fit them for exportation; or it may be, for domestic use. They act upon the subject before it becomes an article of foreign commerce, or of commerce among the states, and prepare it for that purpose. They form a portion of that immense mass of legislation, which embraces every thing within the territory of a state, not surrendered to the general government; all which can be most advantageously exercised by the states themselves. Inspection laws, quarantine laws, health laws of every description, as well as laws for regulating the internal commerce of a state, and those which respect turnpike roads, ferries, &c., are component parts of this mass."

This remark of Chief Justice Marshall is a frail support for the conclusion that states may directly regulate the business carried on by owners of interstate ferries. The current of his opinion runs strongly against it. The misapprehension of the remark is pointed out and corrected in *Gloucester Ferry case*, *supra*, where it is said:

"In *Gibbons v. Ogden*, Chief Justice Marshall said that laws respecting ferries, as well as inspection laws, quarantine laws, health laws, and laws regulating the internal commerce of the states, are component parts of an immense mass of legislation, embracing everything within the limits of a state not surrendered to the general government; *but in this language he plainly refers to ferries entirely within the state*, and not to ferries transporting passengers and freight between the states and a foreign country; for the power vested in congress, he says, comprehends every species of commercial intercourse between the United States and foreign countries. No sort of trade, he adds, can be carried on between this country and another to which the power does not extend; and what is true of foreign commerce is also true of commerce between states over the waters separating them. Ferries between one of the states and a foreign country cannot be deemed, therefore, beyond the control of congress under the commercial power. They are necessarily governed by its legislation on the importation and exportation of merchandise and the immigration of foreigners, that is, are subject to its regulation in that respect; and if they are not beyond the control of the commercial power of congress, neither are ferries over waters separating states."

Nearly every important instrument of interstate commerce was created by authority of the states; but that fact does not justify or support the conclusion that commerce carried on by those instruments may be directly regulated by the states. In the *Covington Bridge Company case* it was said, at p. 219:

"Nor does it follow that because a state may authorize a ferry or bridge from its own territory to that of another state it may regulate the charges upon such bridge or ferry. A state may undoubtedly create corporations for the purpose of building and running steamships to foreign ports, but it would hardly be claimed that an attempt to fix a scale of charges for the transportation of persons or property to and from such foreign ports would not be a regulation of commerce and beyond the constitutional power of the state. It is true the states have assumed the right in a number of instances, since the adoption of the constitution, to fix the rates or tolls upon interstate ferries and bridges, and perhaps in some instances, have been recognized as having the authority to do so by the courts of the several states. But we are not aware of any case in this court where such right has been recognized."

There is a fact in the case of *Gibbons v. Ogden* which seems to remove all doubt as to the meaning of the remark of Chief Justice Marshall, to which reference has been made. That great case grew out of the operation by Gibbons of a *ferry* between Elizabethtown (now the city of Elizabeth, which includes Elizabeth Port) in New Jersey and the city of New York. If the commerce clause of the constitution does not include interstate ferries within the scope

of its operation, this court would not have had jurisdiction of that case. The distance by water between the southerly end of Manhattan Island and Elizabeth Port is about twelve miles, but that distance did not deprive the business carried on by Gibbons of the character of a ferry. In the case of *Mayor, &c., of New York v. The New Jersey Steamboat Navigation Company*, 106 N. Y., 28, it appeared that the company was operating a ferry between a point on Manhattan Island and Elizabeth Port in New Jersey, stopping *en route* at three points on Staten Island. It was alleged that the ferry so far as it operated between Manhattan Island and points on Staten Island (both of which are in the state of New York) was an invasion of the exclusive right of the city to operate or license the operation of ferries between points on Manhattan Island and other points in the state of New York opposite Manhattan Island. The New York court of appeals said:

"The ferry operated by the New Jersey Steamboat Transportation Company started from the same pier in the city [as the boats licensed by the city], and ran thence to the city of Bayonne in the state of New Jersey, on the north shore of the Kill von Kull, thence to West Brighton, thence to Port Richmond, thence to Elm Park [on Staten Island], and thence to Elizabeth Port, New Jersey; then it returned, stopping at the same places, to the same pier, the round trip being about twenty-four miles. * * * The distance of Elm Park, or even of Elizabeth Port, from the city is not so great that a ferry could not be established and operated between it and the city. *Ferries to Elizabeth Port have been operated and known as ferries for more than one*

hundred years, and it appears never to have been doubted that ferries could be operated between the two places.

“It is impossible, in a general way, to specify to what distance, over intervening waters, ferries may be operated. A ferry could not be established between New York and Boston or New York and Newport or Philadelphia. The distance would be too great and the business of transporting passengers and freight between such distant places would be that of common carriers upon public waters. But when the intervening waters are not wide and can be traversed at regular and brief intervals by boats adapted to a ferry business, there can be no question that ferries may be established and operated.”

The fact that Gibbons was engaged in carrying on a ferry business between New York and Elizabethtown must have been well known to the very able counsel who argued the case, and if there was any reason to suppose that the commerce clause of the constitution did not apply to ferries or that states had authority to regulate directly interstate ferries, that fact no doubt would have been interposed as a defence to Ogden's application for an injunction. It is evident that Chief Justice Marshall understood that a ferry was the subject matter of the litigation in that case, because at p. 215, after referring to the license that Gibbons had obtained for his ferry-boat, he said:

“But, if the license be a permit to carry on the coasting trade, the respondent denies that these boats were engaged in that trade, or that the decree under consideration has restrained them

from prosecuting it. *The boats of the appellant were, we are told, employed in the transportation of passengers; and this is no part of that commerce which congress may regulate.*

"If, as our whole course of legislation on this subject shows, the power of congress has been universally understood in America to comprehend navigation, it is a very persuasive, if not a conclusive argument, to prove that the construction is correct; and, if it be correct, no clear distinction is perceived between the power to regulate vessels employed in transporting men for hire, and property for hire. The subject is transferred to congress, and no exception to the grant can be admitted which is not proved by the words or the nature of the thing."

It is unnecessary to review and analyze the cases in which expressions based on the remark of Chief Justice Marshall appear. It has been done repeatedly in subsequent cases, especially in *St. Clair County v. Interstate Transfer Co.*, 192 U. S., 454, *Corington & Cincinnati Bridge Co. v. Kentucky*, 154 U. S., 204, and *New York Central R. R. Co. v. Hudson County*, 227 U. S., 248. Whatever conclusions might have been drawn from the *dicta* referred to in respect of the power of the states to regulate interstate commerce by ferries in the absence of regulation under congressional authority, were rejected by the case of *Wabash, &c. Ry. Co. v. Illinois*, 118 U. S., 557, in which it was said, after reviewing earlier cases, including *Gloucester Ferry Co. v. Pennsylvania*:

"We must, therefore, hold that it is not, and never has been, the deliberate opinion of a majority of this court that a statute of a state which

attempts to regulate the fares and charges by railroad companies within its limits, for a transportation which constitutes a part of commerce among the states, is a valid law." (p. 575.)

And in the fifth *syllabus*, after referring to the so-called granger cases, it is said:

"Notwithstanding what is there said, *this court holds now, and has never consciously held otherwise, that a statute of a state, intended to regulate or to tax or to impose any other restriction upon the transmission of persons or property or telegraphic messages from one state to another, is not within that class of legislation which the states may enact in the absence of legislation by congress; and that such statutes are void even as to that part of such transmission which may be within the state.*"

And in the *St. Clair County case*, *supra*, it was said, at page 470:

"We must not be understood as deciding that the doctrine which undoubtedly finds support in the opinions announced in *Fanning v. Gregoire* [16 How., 524] and *Conway v. Taylor* [1 Black, 603], has not been modified by the rule subsequently laid down in the *Gloucester Ferry case* and the *Corington Bridge case.*"

In the *New York Central Railroad case* it was said that the *Gloucester Ferry case* holds "that in view of the character of such ferries and the diversity of regulation which might be required, the right to regulate them came within that class of subjects which although within the power of congress the states had the right to deal with until congress had manifested its paramount and exclusive authority." (p. 259.) I

do not, however, understand that the word "regulate" in that expression includes direct regulation of commerce carried on by interstate ferries, as by prescribing rates, because if so understood it would not seem to be a correct interpretation of the opinion in the *Gloucester case*, and if it does not include direct regulation, it is not inconsistent with the opinion in the *Covington Bridge case*. The part of the opinion in the *Gloucester Ferry case* which probably suggested the view presented in the *New York Central case* is italicised in the following quotation. I have observed nothing else in the opinion to sustain that view.

"The power to regulate that commerce [interstate commerce], as well as commerce with foreign nations, vested in congress is the power to prescribe the rules by which it shall be governed—that is, the conditions upon which it shall be conducted; to determine when it shall be free, and when subject to, duties or other exactions. The power also embraces within its control all the instrumentalities by which that commerce may be carried on and the means by which it may be aided and encouraged. *The subjects, therefore, upon which the power may be exerted are of infinite variety. While with reference to some of them which are local and limited in their nature or sphere of operation, the states may prescribe regulations until congress intervenes and assumes control of them; yet, when they are national in their character and require uniformity of regulation affecting alike all the states, the power of congress is exclusive. Necessarily that power alone can pre-*

scribe regulations which are to govern the whole country. And it needs no argument to show that the commerce with foreign nations and between the states, which consists in the transportation of persons and property between them is a subject of national character and requires uniformity of regulation. Congress alone, therefore, can deal with such transportation; its non-action is a declaration that it shall remain free from burdens imposed by state legislation. Otherwise there would be no protection against conflicting regulations of different states, each legislating in favor of its own citizens and products and against those of other states. It was from apprehension of such conflicting and discriminating state legislation, and to secure uniformity of regulation, that the power to regulate commerce with foreign nations and among the states was vested in congress." (pp. 203-4.)

It seems to me, and I respectfully ask leave to submit my view, that "the subjects * * * which are local and limited in their nature" with reference to which "the states may prescribe regulations until congress intervenes and assumes control of them" are referred to in a subsequent part of the opinion in the *Gloucester Ferry case*, and are not matters of *direct* regulation. After referring to taxes or tolls on vessels allowed to meet expenses incurred in improving the navigation of waters traversed by them, as by the removal of rocks, the construction of dams, &c., the opinion proceeds (p. 214) :

"Upon similar grounds, what are termed harbor dues or port charges, exacted by the state from vessels in its harbors, or from their owners,

for other than sanitary purposes are sustained. We say for other than sanitary purposes; for the power to prescribe regulations to protect the health of the community, and prevent the spread of disease, is incident to all local municipal authority, however much such regulations may interfere with the movements of commerce. But, independently of such measures, the state may prescribe regulations for the government of vessels whilst in its harbors; it may provide for their anchorage or mooring, so as to prevent confusion and collision; it may designate the wharves at which they shall discharge and receive their passengers and cargoes, and require their removal from the wharves when not thus engaged, so as to make room for other vessels. It may appoint officers to see that the regulations are carried out, and impose penalties for refusing to obey the directions of such officers; and it may impose a tax upon vessels sufficient to meet the expenses attendant upon the execution of the regulations. The authority for establishing regulations of this character is found in the right and duty of the supreme power of the state to provide for the safety, convenient use and undisturbed enjoyment of property within its limits; and charges incurred in enforcing the regulations may properly be considered as compensation for the facilities thus furnished to the vessels. *Vanderbilt v. Adams*, 7 Cowen, 349, 351. Should such regulations interfere with the exercise of the commercial power of congress, they may at any time be superseded by its action. It was not intended, however, by the grant to congress to supersede or interfere with the power

of the states to establish police regulations for the better protection and enjoyment of property. Sometimes, indeed, as remarked by Mr. Cooley, the line of distinction between what constitutes an interference with commerce and what is a legitimate police regulation is exceedingly dim and shadowy, and he adds: 'It is not doubted that congress has the power to go beyond the general regulations of commerce which it is accustomed to establish, and to descend to the most minute directions if it shall be deemed advisable, and that to whatever extent ground shall be covered by these directions, the exercise of state power is excluded. Congress may establish police regulations as well as the states, confining their operations to the subjects over which it is given control by the constitution; but as the general police power can better be exercised under the provisions of the local authority, and mischiefs are not likely to spring therefrom so long as the power to arrest collision resides in the National congress, the regulations which are made by congress do not often exclude the establishment of others by the state covering very many particulars.' Cooley's Constitutional Limitations, 732."

If my understanding of the opinion in the *Gloucester Ferry case* is correct it recognizes the right of the states to make and enforce regulations that indirectly and in minor particulars affect interstate commerce until congress takes action, and then in all respects covered by congressional action the regulations of the states must give way. But the opinion in that case does not assert or recognize the right of a

state to regulate directly interstate commerce carried on by a ferry in the absence of regulation by authority of congress. It states:

"And it needs no argument to show that the commerce with foreign nations and between the states, which consists in the transportation of persons and property between them, is a subject of national character, and requires uniformity of regulation. Congress alone, therefore, can deal with such transportation; its non-action is a declaration that it shall remain free from burdens imposed by state legislation. Otherwise there would be no protection against conflicting regulations of different states, each legislating in favor of its own citizens and products, and against those of other states." (p. 204.)

The opinion in the *Gloucester Ferry case* so understood, is in harmony with the *Corington Bridge Company case*, and with the opinion in *Robbins v. Shelby Taring District*, 120 U. S., 489, 492-494. It also agrees with the elaborate opinion in the recent *Minnesota Rate cases*, 230 U. S., 352, 398-412, where the boundary line between the authority of congress and of the states in respect of interstate commerce is carefully indicated in so far as it has been defined by litigation.

It has been said occasionally in discussing this subject that: "A ferry is in respect of the landing place, and not of the water. The water may be to one, and the ferry to another" (1 Black, 629-630.) This expression is somewhat vague, and is equivalent to saying that a bridge is in respect of its abutments, and not of its span. A ferry establishment is an entity, consisting of approaches, landings, and one or more

boats. Without one of the landings, or a boat, it would be utterly ineffective—it would not be a ferry at all. As an entity it is an instrument of commerce; but whatever the nature of a ferry may be as an instrument of commerce, *its business is commerce*, and a ferry boat plying between two states carries on interstate commerce, and therefore such a ferry is subject to direct ^{regu} legislation only by authority of congress.

The cases in New Jersey in which the authority of the state to prescribe rates to be charged by owners of interstate ferries has been considered are: *State v. Freeholders of Hudson*, 23 N. J. Law, 206, affirmed (1853) in 24 N. J. Law, p. 718. That case appears to have been disposed of by the New Jersey courts within a narrow range of discussion, and with little regard to the scope and meaning of the commerce clause of the constitution. The question arose again in the *New York Central case*, 74 N. J. Law, 367, and it was held by the supreme court of New Jersey that the state did not have the power to prescribe rates to be charged by the ferries operated by that company. The judgment in that case, however, was reversed by the court of errors and appeals of New Jersey (76 N. J. Law, p. 664) for the reason that the court felt bound to follow the case decided in 1853 and cited above. The opinion, however, was not unanimous. The dissenting opinion, written by chief justice Gummere, may be found in 80 N. J. Law, p. 305. It contains a very thorough review of the authorities. The prevailing opinion of the court of errors and appeals in the *New York Central case* contains this significant paragraph (76 N. J. Law, at p. 679):

"It may be admitted that the logical inferences to be deduced from the later federal decisions,

are in favor of the view that when the precise question arises in the federal tribunal, it will be held that the right to regulate tolls for the use of a ferry, like the one in question, resides alone in congress; and if the present question were new in this state, the line of reasoning in the learned opinion delivered in our supreme court in this case would be strongly in that direction. But in the face of the adjudication in our court of last resort, made over fifty years ago, I think we should take no step in that direction beyond that taken by the federal court in actual decisions."

The judgment in the *New York Central* case was reversed by this court at the last term; 227 U. S., 248.

The history of the commerce clause of the constitution confirms the opinion that it was intended to transfer the power to regulate directly foreign commerce and commerce among the states of all kinds and by every means, from the states to the national government. See letters by Madison to Cabell (1829), and to Davis (1832); Letters and Writings of Madison, vol. iv., pp. 14 and 247; Curtis' Const. Hist. U. S., vol. 1, p. 231, note; Elliot's Debates, vol. 1, p. 115, ed. 1876; Webster's Works, vol. vi., p. 9, 8th ed. 1854; 9 Wheat. at p. 226, and 12 Wheat. at p. 445.

If the power to regulate *foreign* commerce was transferred to congress by the constitution, it cannot be denied that power to regulate *interstate* commerce was also transferred at the same time. The transfer to congress of power to regulate commerce with foreign nations and among the several states and with the Indian tribes, was effected by the same clause of the constitution, if effected at all. No state has succeeded in a direct attempt to regulate commerce with foreign nations since the constitution was adopted, because :—

"In regard to foreign nations, it is universally admitted that the words comprehend every species of commercial intercourse. No sort of trade or intercourse can be carried on between this country and another, to which they do not extend. Commerce, as used in the constitution, is a unit, every part of which is indicated by the term. *If this be its admitted meaning in its application to foreign nations, it must carry the same meaning throughout the sentence.* The next words are, 'among the several states.'" Story on the Constitution, section 1065.

That statement of Story in his Commentaries has been affirmed by this court in *Crutcher v. Kentucky*, 141 U. S., 47, at pp. 57 and 58:

"It has frequently been laid down by this court that the power of congress over interstate commerce is as absolute as it is over foreign commerce. Would any one pretend that a state legislature could prohibit a foreign corporation—an English or a French transportation company, for example—from coming into its borders and landing goods and passengers at its wharves, and soliciting goods and passengers for a return voyage, without first obtaining a license from some state officer, and filing a sworn statement as to the amount of its capital stock paid in? And why not? Evidently because the matter is not within the province of state legislation, but within that of national legislation. Inman Steamship Co. v. Tinker, 94 U. S., 238. The prerogative, the responsibility and the duty of providing for the security of the citizens and the people of the United States in relation to foreign corporate

bodies, or foreign individuals with whom they may have relations of foreign commerce, belong to the government of the United States, and not to the governments of the several states; and confidence in that regard may be reposed in the national legislature without any anxiety or apprehension arising from the fact that the subject matter is not within the province or jurisdiction of the state legislatures. *And the same thing is exactly true with regard to interstate commerce as it is with regard to foreign commerce. No difference is perceivable between the two. Telegraph Co. v. Texas*, 105 U. S., 460; *Gloucester Ferry Co. v. Pennsylvania*, 114 U. S., 196, 205, 211; *Phila. Steamship Co. v. Pennsylvania*, 122 U. S., 326, 342; *McCall v. California*, 136 U. S., 104, 110; *Norfolk & Western Railroad v. Pennsylvania*, 136 U. S., 114, 118."

Western Union Telegraph Co. v. Kansas, 216 U. S., 1, also distinctly holds *inter alia* that the power of congress over interstate commerce is as absolute as it is over foreign commerce, following with approval the case of *Crutcher v. Kentucky*.

A discussion of the power of the states to regulate interstate ferries in the absence of action for that purpose by congress would seem to be unnecessary, because congress has undertaken to regulate interstate ferries in many respects. Section 2792 of the compiled statutes of the United States is as follows:

"Vessels used exclusively as *ferry-boats* carrying passengers, baggage and merchandise, shall not be required to enter and clear, nor shall the masters of such vessels be required to present manifests or to pay extrace or clearance fees,

or fees for receiving or certifying manifests, but they shall, upon arrival in the United States, be required to report such baggage and merchandise to the proper officer of the customs according to law."

That section evidently relates to ferries between points in Canada and Mexico and the United States. But section 4426 applies to *all* ferry-boats, and is as follows:

"The hull and boilers of every ferry-boat, canal-boat, yacht, or other small craft of like character, propelled by steam, shall be inspected under the provisions of this title. Such other provisions of law for the better security of life, as may be applicable to such vessels, shall, by the regulations of the board of supervising inspectors, also be required to be complied with, before a certificate of inspection shall be granted; and no such vessel shall be navigated without a licensed engineer and a licensed pilot. *Provided*, however, that in open steam-launches of ten tons burden and under, one person, if duly qualified, may serve in the double capacity of pilot and engineer."

Moreover, much of the voluminous legislation of congress regulating navigation applies to ferry-boats as well as to craft engaged in the coasting trade.

Section 4400 of the compiled statutes—one of the sections relating to the regulation of steam vessels—states that: "*All steam vessels* navigating any waters of the United States which are common highways of commerce, or open to general or competitive navigation, excepting public vessels of the United States, vessels of other countries, and boats propelled in

whole or in part by steam for navigating canals, shall be subject to the provisions of this title [LII]"; and then follow sixty-two sections regulating the vessels referred to in section 4400, and providing among other things for licensing their captains, mates, engineers, pilots, &c.; especially sections 4439-4442. These statutes not only show that congress has undertaken to regulate ferry-boats engaged in commerce, but *they also indicate the will of congress that no other regulations shall be made until congress decides to take further action.* *Robbins v. Shelby, &c.*, 120 U. S., 489, 493. On this point the authorities appear to be conclusive.

There are one or two passages in the case of *Hall v. De Cuir*, 95 U. S., 485, 488, which are so relevant to this aspect of the present discussion that I will quote them at length:

"We think it may safely be said that state legislation which seeks to impose a direct burden upon interstate commerce, or to interfere directly with its freedom, does encroach upon the exclusive power of congress. The statute now under consideration, in our opinion, occupies that position. It does not act upon the business through the local instruments to be employed after coming within the state, but directly upon the business as it comes into the state from without or goes out from within. While it purports only to control the carrier when engaged within the state, it must necessarily influence his conduct to some extent in the management of his business throughout his entire voyage. His disposition of passengers taken up and put down within the state, or taken up within to be carried without,

cannot but affect in a greater or less degree those taken up without and brought within, and sometimes those taken up and put down without. A passenger in the cabin set apart for the use of whites without the state must, when the boat comes within, share the accommodations of that cabin with such colored persons as may come on board afterwards, if the law is enforced.

"It was to meet just such a case that the commercial clause in the constitution was adopted. The river Mississippi passes through or along the borders of ten different states, and its tributaries reach many more. The commerce upon these waters is immense, and its regulation clearly a matter of national concern. If each state was at liberty to regulate the conduct of carriers while within its jurisdiction, the confusion likely to follow could not but be productive of great inconvenience and unnecessary hardship. Each state could provide for its own passengers and regulate the transportation of its own freight, regardless of the interests of others. Nay, more, it could prescribe rules by which the carrier must be governed within the state in respect to passengers and property brought from without. On one side of the river or its tributaries he might be required to observe one set of rules, and on the other another. Commerce cannot flourish in the midst of such embarrassments. No carrier of passengers can conduct his business with satisfaction to himself, or comfort to those employing him, if on one side of a state line his passengers, both white and colored, must be permitted to occupy the same cabin, and on

the other be kept separate. Uniformity in the regulations by which he is to be governed from one end to the other of his route is a necessity in his business, and to secure it congress, which is untrammelled by state lines, has been invested with the exclusive legislative power of determining what such regulations shall be."

It is therefore respectfully submitted :

(1) That the power to regulate directly commerce among the states, including whatever power the states previously had to prescribe rates for interstate commerce, whether by virtue of their police power or otherwise, was transferred to the United States by the adoption of the commerce clause of the constitution, and can only be exercised by or with the authority of congress.

(2) That ferries with their landings or termini in different states are instruments of interstate commerce; and the transportation of passengers, vehicles, horses and cattle from one state to another by interstate ferries is interstate commerce.

(3) That the states may regulate interstate commerce by means of ferries or otherwise indirectly or incidentally in the absence of such regulation by authority of congress, but the states cannot directly regulate interstate commerce by ferries or otherwise, even in the absence of direct regulation by authority of congress, nor can the states indirectly or incidentally regulate interstate commerce by means of ferries or otherwise in any particular in which such regulation has been undertaken by authority of congress.

(4) That congress, by direct legislation, and by extending the jurisdiction of the interstate commerce commission, has regulated interstate ferries to the extent that direct regulation, in the judgment of congress, is necessary or desirable at present. The states have no power to supplement those direct regulations, it being presumed conclusively that in the particulars in which congress has omitted to regulate directly interstate ferries, there shall be no regulation until congress shall decide to take further action; *supra*, pp. 18 and 23; 120 U. S., 489, 493.

(5) That the resolutions in question in this case constitute an effort by the defendant in error, under the alleged authority of a statute of New Jersey passed in 1799, to regulate interstate commerce directly and in an essential particular, and are therefore illegal and void.

(6) That the legal question involved in this case is directly controlled by the *Covington Bridge cases* and the *Gloucester Ferry case*; and the logical inferences from the cases of *Crutcher v. Kentucky*, *St. Clair County v. Interstate Transfer Co.*, and *Robbins v. Shelby Taring District*, *supra*, confirm the *Covington* and *Gloucester cases*.

(7) That the judgment under review should be reversed and the resolutions therein referred to set aside.

FRANK BERGEN,

Counsel for Plaintiff in Error.

STATE OF TEXAS

COUNTY OF DALLAS

Supreme Court of the United States.

October Term, 1913, No. 225.

PORT RICHMOND AND BERGEN
POINT FERRY COMPANY,

Plaintiff-in-Error,

vs.

THE BOARD OF CHOSEN FREEHOLD-
ERS OF THE COUNTY OF HUDSON,

Defendant-in-Error.

In Error
to the Court
of Errors
and Appeals
of the
State of
New Jersey.

BRIEF FOR THE DEFENDANT-IN- ERROR.

Statement of Facts.

This writ of error is brought to review a judgment of the Court of Errors and Appeals of New Jersey, affirming a judgment of the Supreme Court of that State, sustaining two resolutions adopted by the Board of Chosen Freeholders of Hudson County, on the 6th day of July, 1905.

The salient parts of the resolutions affecting this case are set out in the brief of plaintiff in error on page 3.

POINTS.

1. That the ferry in question does not come within the meaning of interstate commerce over which the constitution confers on Congress the power of regulation.

2. That if the ferry be deemed to be within the meaning of the term interstate commerce, Congress has not undertaken the regulation of it,

and consequently such regulation is within the power of the two states between which it plies.

3. That the resolutions of the Board of Chosen Freeholders of the County of Hudson, State of New Jersey, that are here brought up for review, were and are a legitimate and lawful exercise of the police power, and that as such, they are not obnoxious to the Constitution of the United States, or to any act of Congress.

4. The resolution of the Board of Freeholders, regulating rates for the round trip, starting from the New Jersey side, is within state jurisdiction.

5. That the Board of Chosen Freeholders of the County of Hudson, State of New Jersey, acting within the authority of an Act of the Legislature of that State, has the same plenary authority to fix rates of ferriage from Bergen Point, in the State of New Jersey, to Port Richmond, in the State of New York, as the Legislature of New York possessed to fix the rates of ferriage from Port Richmond, New York, to Bergen Point, New Jersey.

POINT I.

The Constitution of the United States provides,

“The Congress shall have power to regulate commerce with foreign nations, and among the several states, and with the Indian tribes.”

Unless this ferry and the business which it transacts come within the meaning of the terms * * commerce among the several states * * the contention of the plaintiff in error must fall. The ferry in question is purely local, and is distinctly not national; it connects a small city in New Jersey with a smaller town in New York.

It is not a vehicle of interstate commerce in any rational sense of that term. It is no part of a railroad or of a street railway. It does not form a link or connection between any railroad or street railway in the State of New Jersey, and any railroad or street railway in the State of New York. Before and since the adoption of the Constitution, the States have exercised with judicial approval, the right of regulating rates of ferryage between states. In *People v. Babcock*, 11 Wend., 586, Judge Samuel Nelson, later of this Court, in delivering the opinion of the New York Court of Errors, said (p. 591) :

"I understand the case of *Gibbons v. Ogden*, 9 Wheat. 1, distinctly to concede that this power, which belongs to the sovereignty of a State, and is essential to the regulation of its internal police has not been surrendered to the national government, and that the clause in the constitution giving to Congress the power 'to regulate commerce with foreign nations, and among the several States, and with the Indian tribes' does not include it.

"Such power has never been claimed by Congress; and, on the contrary, it has always been exercised by the several States, between which a ferry is practicable and convenient. There are numerous acts in our statute book establishing ferries across the river in question (Niagara); also across the St. Lawrence, Lake Champlain, the River Hudson opposite New Jersey, and Long Island Sound opposite Connecticut."

Ferry Company v. United States, 5 Blatch, 198.

So the Supreme Court of New York, in 1882, speaking of a ferry from 129th Street in New York City to Fort Lee, New Jersey, said:

"The right to establish or regulate ferries is not included in the power ceded to the general government to regulate commerce * * * among the several States."

Freeholders of Hudson County v. State,
24 N. J. L., 718;

Mills v. County of St. Clair, 2 Gilm.
(Ill.) 197, affirmed by U. S. Supreme
Court, 8 How. 569;

Chilvers v. People, 11 Mich., 43;

Marshall v. Grimes, 41, Miss. 27.

POINT II.

There is no contention here that Congress has undertaken the regulation of the rates of ferriage over this ferry, nor is there any legislation by Congress to indicate its intention to divest the State between which the ferry plies, or either them, of the right to fix the rates of ferriage from their respective shores. The only ferries over which Congress has assumed jurisdiction are those used or operated in connection with any railroad as appears by the Act of February 4, 1887, Chap. 104, 24 Stat. at L. 379, U. S. Comp. Stat. 1901, p. 3154.

The case of the *Gloucester Ferry Company v. Pennsylvania*, 114 U. S. 158, turned upon a question of taxation and presents no *res adjudicata* with respect to the question here at issue. In this case it was held that in view of the character of such ferries and the diversity of regulation which might be required, the right to regulate them came within that class of subjects which although within the power of Congress, the State had the right to deal with until Congress had manifested its paramount and exclusive authority.

On page 166, the Court said :

"From the earliest period in the history of the government, the States have authorized and regulated ferries, not only over waters entirely within their limits, but over waters separating them; and it may be conceded that in many respects the States can more advantageously manage such inter-State ferries than the general government; and that the privilege of keeping a ferry with the right to take toll for passengers and freight, is a franchise grantable by the State, to be exercised within such limits and under such regulations as may be required for the safety, comfort and convenience of the public."

In *Corvington Bridge Co. v. Kentucky*, 154 U. S., page 223, Mr. Justice Brown said :

"We do not wish to be understood as saying that, in the absence of Congressional Legislation, or mutual legislation of the two States, the company has the right to fix tolls at its own discretion. * * *

"Nor are we to be understood as passing upon the question whether, in the absence of legislation by Congress the States may, by reciprocal action fix upon a tariff which shall be operative on both sides of the river."

In this case Mr. Chief Justice Fuller, and Justices Field, Grey and White, in their separate opinion, said :

"The several States have the power to establish and regulate ferries and bridges, and the rates of toll thereon, whether within one State, or between two adjoining States, subject to the paramount authority of Congress over inter-State commerce."

It does not seem reasonable that the framers of the constitution intended to strip the States of

the right to regulate ferriages, when the Legislatures of the States that adopted the constitution were passing laws on this subject about the time the constitution was adopted.

POINT III.

The resolution of the Board of Chosen Freeholders of the County of Hudson, State of New Jersey, now under review, is a legitimate and lawful exercise of the police power of the State, the purpose of it being manifestly to prevent the extortion of excessive rates of ferriage from the people using that public utility.

In *Conway v. Taylor's Executors*, 1 Black., 603, a case decided in 1862, Mr. Justice Swayne discusses and follows Marshall's rule, quoting also the statement of the Court in *Fanning v. Gregoire*, 16 How., 524., that Federal power over commerce does not "interfere with the police power of a State in granting ferry licenses." There are many other decisions which are equally clear in limiting Federal jurisdiction.

"In the case of *Fanning v. Gregoire*, 16 How., 524, it was declared by this Court, speaking of the charter of Fanning to ferry across the Mississippi River at Dubuque, that the exercise of the commercial power by Congress did not interfere with the police power of the State in granting ferry licenses.

"And in the case of *Conway v. Taylor's Executors*, 1 Black., 603, Mr. Justice Swayne, speaking for the Court, in reference to a ferry established across the Ohio River, between the States of Ohio and Kentucky, declared that the power to establish and regulate ferries did not belong to Congress under the power to regulate commerce, but belonged to the States, and lay within the scope of that

immense mass of undelegated powers reserved by the Constitution to the States."

Wiggins Ferry Co. v. East St. Louis, 107 U. S., 365, affirming 102 Ill., 560.

That this Court does not understand the Covington Bridge case to overrule the previous cases, appears from two subsequent decisions, *Williams v. Wingo*, 177 U. S., 601, and *Louisville Ferry Co. v. Kentucky*, 188 U. S., 385, the first of these cases decided six years and the second ten years later than the Covington Bridge case.

In *Williams v. Wingo*, this Court, after stating the substance of *Fanning v. Gregoire*, including the fact that the stream there dealt with formed a State boundary, held that that case was "in point and decisive" (177 U. S., at p. 603) of a similar question arising upon an intra-State stream. Had *Fanning v. Gregoire* been wrong as to the only class of streams with which it dealt, and had its doctrine been right only as applied by analogy to a class of streams not in that case under discussion, the Court could not have found the case "in point" or have followed the decision.

In *Louisville Ferry Co. v. Kentucky*, this Court (188 U. S., at p. 394) cited and approved the case of *Conway v. Taylor's Executor*.

POINT IV.

Such regulation has been sustained in a recent and well-reasoned case.

State v. Sickmann, 65 Mo., App. 499.

Legislation of this character by each State produces no conflict, for each State asserts only the rights which are conceded to other States.

Moreover carriers are accustomed to treat a round trip as different from two separate trips in opposite directions. The round trip may, therefore, well be regarded, so far as the price is concerned, as a single service to be regulated by the State of first departure.

A ferry is in respect of the landing place and not of the water. The water may be to one, and the ferry to another.

Conway v. Taylor, 1 Black., 603, citing
Viner's Ab., 208A;
People v. Babcock, 11 Wend., 590.

The Ferry Act of New Jersey had in view the ferry establishment, and not the way across the river; it applies to a ferry having one of its termini in this State.

Chosen Freeholders v. State, 4 Zab., 718
(722-724).

POINT V.

This proposition does not seem to require any argument whatever to support it.

The power of the Legislature of New Jersey so far as regulating the rates of ferriage from its shores is concerned, which has been sustained by the Court of Errors and Appeals, may delegate it to the Board of Chosen Freeholders, and therefore, the exercise of it by the Board of Chosen Freeholders is quite as constitutional and authentic as the exercise of it by the Legislature directly would be.

This case as presented to the Court asserts for the Board of Chosen Freeholders, and the Legislature of New Jersey, the power to prescribe what ferriage may be exacted by the company engaged

in the business of transporting passengers from its shores across the stream to the shores of New York.

I respectfully submit that the resolution of the Board of Chosen Freeholders of the County of Hudson, fixing the tolls from Bergen Point, New Jersey, to Port Richmond, New York, is valid; and the judgment of the Court of Errors and Appeals of New Jersey should be affirmed.

JAMES J. MURPHY,
Counsel for Defendant in Error.

Appendix.**AN ACT CONCERNING FERRIES.**

Passed February 6, 1799.

General Statutes (1709—1895), 1469.

Complied Statutes (1709—1910), 2308.

1. That the board of chosen freeholders shall be, and they hereby are empowered and directed to fix the rates to be taken at the several ferries within their respective counties, and the same, from time to time, to revise, alter, amend, or make anew at their discretion.

2. That the owner or keeper of every ferry shall put up and maintain, where such ferry is kept, a post, with a table of rates, fairly printed, written or painted, in large capitals, fixed and allowed by the said board, annexed thereto, and set up such post, with the table aforesaid, so near the place where the passengers enter the boat used for such ferry, that the said table and rate shall be open and visible to the said passengers; and if the owner or keeper of any ferry shall fail, neglect or refuse to put up and maintain a post and table of rates, in the manner and form aforesaid, he shall, for every day he may so fail, neglect or refuse, forfeit and pay one dollar, to be recovered by action of debt, with costs of suit, by any person who will prosecute for the same.

3. That the clerk of such board shall be entitled to receive, for a copy of the rates aforesaid, certified under his hand, the sum of fifty cents.

4. That if any ferryman, keeper of a ferry, or his servant, shall demand or take a greater sum for ferriage than the rate fixed by the said board,

he shall, for every such offense, forfeit and pay three dollars, to be recovered by action of debt, with cost of suit, by any person who will prosecute for the same.

5. That the owner or keeper of every ferry shall, at all times, be provided with good and tight boats, flats, wherries or other vessels, suited to such ferry, sufficient in size, strength, steadiness and accommodation, for the safe and speedy transportation of passengers, horses, cattle, carriages and goods, well furnished with sails, oars, setting-poles, or other necessary implements, and men, prudent, skillful, able-bodied, sufficient and competent to such business and service.

6. That no ferryman shall carry or attempt to carry any person over any ferry in a boat, flat, wherry, or other vessel, that is not good and sufficient according to this act, under the penalty of ten dollars, to be recovered by action of debt, with costs of suit, by any person who will prosecute for the same.

7. That every owner or keeper of a ferry, who shall not provide good and sufficient sails, oars, setting-poles or other necessary implements as aforesaid, and such man or men as the condition of the passage shall require, qualified according to this act, for the safe and speedy transportation of passengers, horses, cattle, carriages and goods, shall for every default therein, pay two dollars, to be recovered by action of debt, with costs of suit, by any person who will sue for the same.

8. That every ferryman shall give constant and diligent attendance at his ferry, and shall not deny or unnecessarily delay the carrying over any passenger, horses, cattle, carriages or goods, upon the penalty of three dollars for every such offense, to be recovered by action of debt, with costs of

suit, by any person who will sue for the same; and such ferryman shall also be liable to an action for damages, at the suit of the party aggrieved; provided always, no ferryman shall be obliged to put off from his wharf or shore, and pass the said ferry, when it manifestly appears to be hazardous or dangerous for him so to do, on account of any storm, tempest, fresh or ice.

9. That every ferryman shall have authority to keep or put out of his ferry-boat or other vessel, any person who shall attempt or press to enter, or who shall enter or stay in his said boat or vessel contrary to his order; and such person so doing contrary to his order, shall pay one dollar for every offense, to be recovered by action of debt, with costs of suit, by any person who will sue for the same.

10. That all persons shall be received into such ferry-boats or vessels and carried over the ferry according to their arrival or first coming to the said ferry; and any ferryman acting contrary to this rule, shall be liable to the penalties prescribed in and by the eighth section of this act; provided, all public officers and such as go on public or urgent occasions as posts, couriers, physicians, surgeons and midwives, shall be carried over first or with the first.

11. That all owners or keepers of ferries shall make, keep and maintain good and safe wharves or places of landing, where they are wanted, upon penalty of forfeiting such sum as the inferior court of common pleas of the county, where the same shall be wanted, shall, upon complaint to them made, determine and adjudge to be sufficient to make or repair such wharf or convenient landing, which forfeit shall, by order of the said court, be appropriated and laid out for that purpose. *l*

